SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1955

No. 308

OLETA O'CONNOR YATES, HENRY STEINBERG, LORETTA STARVUS STACK, ET AL., PETITIONERS,

vs.

UNITED STATES OF AMERICA

No. 309

WILLIAM SCHNEIDERMAN, PETITIONER,

vs.

UNITED STATES OF AMERICA

No. 310

AL RICHMOND AND PHILIP MARSHALL CONNELLY, PETITIONERS,

vs.

UNITED STATES OF AMERICA

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

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IN THE UNITED STATES DISTRICT COURT IN AND FOR THE SOUTHERN DISTRICT OF CALIFORNIA, CENTRAL DIVISION

February, 1951, Grand Jury

No. 22131-CD

UNITED STATES OF AMERICA, Plaintiff,

v.

WILLIAM SCHNEIDERMAN, DOROTHY ROSENBLUM HEALEY, Albert Jason Lima, Oleta O'Connor Yates, Carl Rude Lambert, Philip Marshall Connelly, Rose Chernin Kusnitz, Al Richmond, also known as Abraham Richman, Ernest Otto Fox, also known as Ernest Otto Fuchs, Henry Steinberg, Loretta Starvus Stack, Mary Bernadette Doyle, Frank Efroim Spector, Frank Carlson, also known as Solomon Szkolnick, and Ben Dobbs, also known as Benjamin Isgur, Defendants

INDICTMENT—Filed December 21, 1951

(U. S. C., Title 18, Sec. 10 (1946 Ed.); U. S. C., Title 18, Sec. 2385 (1948 Ed.); U. S. C., Title 18, Sec. 11 (1946 Ed.); U. S. C., Title 18, Sec. 371 (1948 Ed.)—Conspiracy to advocate the overthrow of the Government by force and violence.)

The grand jury charges:

(1) From on or about June 28, 1940, and continuously thereafter to and including the date of the filing of this indictment, in the Southern District of California, in the State of California, in the State of New York, and in other places to the grand jury unknown, William Schneiderman, Dorothy Rosenblum Healey, Albert Jason Lima, Oleta O'Connor Yates, Carl Rude Lambert, Philip Marshall Connelly, Rose Chernin Kusnitz, Al Richmond, also known as [fol. 3] Abraham Richman, Ernest Otto Fox, also known as Ernest Otto Fuchs, Henry Steinberg, Loretta Starvus

Stack, Mary Bernadette Doyle, Frank Efroim Spector, Frank Carlson, also known as Solomon Szkolnick, and Ben Dobbs, also known as Benjamin Isgur, the defendants herein, wilfully and knowingly did conspire with each other and with William Z. Foster, Eugene Dennis, John B. Williamson, Jacob Stachel, Robert G. Thompson, Benjamin J. Davis, Jr., Henry Winston, John Gates, Irving Potash, Gilbert Green, Carl Winter, and Gus Hall, co-conspirators but not defendants herein, and with divers other persons to the grand jury unknown, to commit offenses against the United States prohibited by Section 2 of the Smith Act (54 Stat. 671), U. S. C., Title 18, Sec. 10 (1946 Ed.), and U. S. C., Title 18, Sec. 2385 (1948 Ed.), in violation of U. S. C., Title 18, Sec. 11 (1946 Ed.), being Section 3 of the said Smith Act while said section of said act remained effective, and thereafter in violation of U. S. C., Title 18, Sec. 371 (1948 Ed.), by (1) wilfully and knowingly advocating and teaching the duty and necessity of overthrowing the Government of the United States by force and violence, with the intent of causing the aforesaid overthrow and destruction of the Government of the United States by force and violence as speedily as circumstances would permit; and by (2) wilfully and knowingly organizing, and helping to organize, as the Communist Party of the United States of America a society, group, and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence, with the intent of causing the aforesaid overthrow and destruc-[fol. 4] tion of the Government of the United States by force and violence as speedily as circumstances would permit;

(2) It was a part of said conspiracy that the conspirators would become members, officers, or functionaries of said Communist Party, knowing the purposes of the said Communist Party, and in such capacities would assume leadership in said Communist Party and responsibility for carrying out its policies and activities to and including the date of the filing of this indictment;

(3) It was further a part of said conspiracy that said defendants and co-conspirators would cause to be organized groups, clubs, sections, and district, state, and national

units of said party in the State of California, in the State of New York, and other places to the grand jury unknown, and would recruit, and encourage recruitment of, members to said party, concentrating on recruiting persons employed in key basic industries and plants;

(4) It was further a part of said conspiracy that said defendants and co-conspirators would publish and circulate, and cause to be published and circulated, books, articles, magazines, and newspapers teaching and advocating the duty and necessity of overthrowing and destroying the Government of the United States by force and violence as speedily as circumstances would permit;

(5) It was further a part of said conspiracy that said defendants and co-conspirators would write, and cause to be written, articles and directives in publications of the Communist Party of the United States of America includ-
[fol. 5] ing, but not limited to, "Political Affairs," "Daily People's World," "Daily Worker," and "The Worker," teaching and advocating the duty and necessity of overthrowing and destroying the Government of the United States by force and violence as speedily as circumstances would permit;

(6) It was further a part of said conspiracy that said defendants and co-conspirators would conduct, and cause to be conducted, schools and classes in which recruits and members of said Communist Party would be indoctrinated in the principles of Marxism-Leninism and in which the duty and necessity of overthrowing and destroying the Government of the United States by force and violence as speedily as circumstances would permit would be taught and advocated;

(7) It was further a part of said conspiracy that said defendants and co-conspirators would agree upon, and carry into effect, detailed plans for the vital parts of the Communist Party of the United States of America to go underground, in the event of emergency, and from said underground position to continue in all respects the conspiracy described in paragraph (1) of this indictment;

(8) It was further a part of said conspiracy that said defendants and co-conspirators would use false names and false documents in order to conceal their identities and

activities as members and functionaries of said party; and

In furtherance of said conspiracy and to effect the objects thereof, the defendants and co-conspirators did commit, among others, the following:

[fol. 6] Overt Acts

1. On or about January 31, 1941, William Schneiderman, a defendant herein, did attend and participate in a meeting held at the Danish Hall, 164 Eleventh Street, Oakland, California.

2. On or about May 12, 1942, William Schneiderman, a defendant herein, did attend and participate in a meeting held at the Serbian Hall, 225 Valencia Street, San Francisco, California.

3. On or about June 27, 1943, William Schneiderman, Oleta O'Connor Yates, Albert Jason Lima, Carl Rude Lambert, and Henry Steinberg, defendants herein, did attend and participate in a convention of the Communist Party of the State of California, held at 121 Haight Street, San Francisco, California.

4. On or about October 17, 1943, William Schneiderman, Oleta O'Connor Yates and Carl Rude Lambert, defendants herein, did attend and participate in a convention of the Communist Party for Alameda County, held at 2229 Telegraph Avenue, Oakland, California.

5. On or about May, 1944, William Schneiderman and Oleta O'Connor Yates, defendants herein, did attend a National Convention of the Communist Party of the United States, held at the Riverside Plaza Hotel, New York City.

6. On or about May, 1945, William Schneiderman, Dorothy Rosenblum Healey, Oleta O'Connor Yates, Albert Jason Lima and Ernest Otto Fox, also known as Ernest Otto Fuchs, defendants herein, did attend and participate in a meeting held at the Danish Auditorium, 1359 W. 24th Street, Los Angeles, California.

7. On or about July 26, 27, and 28, 1945, William Schneiderman, Loretta Starvus Stack and Albert Jason [fol. 7] Lima, defendants herein, did attend a National convention of the Communist Party of the United States, held in New York City.

8. On or about August 18 and 19, 1945, William Schneiderman, Carl Rude Lambert, Loretta Starvus Stack, Al Richmond, also known as Abraham Richmond, Albert Jason Lima, and Frank Carlson, also known as Solomon Szkolnick, did attend and participate in a convention of the Northern Section of the Communist Party of the State of California, held at 1621 Market Street, San Francisco, California.

9. On or abouf July 17 and 18, 1948, William Schneiderman, Dorothy Rosenblum Healey, Albert Jason Lima, Oleta O'Connor Yates, Carl Rude Lambert, Al Richmond, also known as Abraham Richman, Loretta Starvus Stack, and Mary Bernadette Doyle, defendants herein, did attend and participate in a convention of the Communist Party of the State of California held at Park Manor, Sixth Street and Western Avenue, Los Angeles, California;

10. On or about August 20, 1948, Mary Bernadette Doyle, a defendant herein, did attend and participate in a meeting of the Morgan Hull Club in San Diego, California;

11. On or about August 21, 1948, Loretta Starvus Stack, a defendant herein, did prepare and issue a directive and cause it to be circulated by the California State Committee of the Communist Party;

12. On or about August 21, 1948, Al Richmond, also known as Abraham Richman, a defendant herein, did issue a direc- [fol. 8] tive and cause it to be circulated by the California State Committee of the Communist Party;

13. On or about January 21, 1949, Henry Steinberg, a defendant herein, did attend and participate in a meeting;

14. On or about May 20, 1949, Rose Chernin Kusnitz, a defendant herein, did attend and participate in a meeting held at 847 South Grand Avenue, Los Angeles, California;

15. On or about December 7, 1949, William Schneiderman and Dorothy Rosenblum Healey, defendants herein, did attend and participate in a meeting at Park View Manor, 2200 West Seventh Street, Los Angeles, California;

16. On or about January 20, 1950, William Schneiderman, a defendant herein, did attend and participate in a meeting at Embassy Auditorium, Los Angeles, California.

17. On or about February 15, 1950, Mary Bernadette Doyle, a defendant herein, did attend and participate in a

meeting held at 7891 Normandie Street, San Diego, California;

18. On or about April 6, 1950, William Schneiderman, a defendant herein, did attend and participate in a meeting at 3875 City Terrace Boulevard, Los Angeles, California;

19. On or about June 12, 1950, Albert Jason Lima, a defendant herein, did attend and participate in a meeting at 2200 West Seventh Street, Los Angeles, California;

20. On or about June 24, 1950, Philip Marshall Connelly, [fol. 9] Mary Bernadette Doyle, and Albert Jason Lima, defendants herein did attend and participate in a meeting at Park Manor, 607 South Western Avenue, Los Angeles, California;

21. On or about November, 1950, Ernest Otto Fox, also known as Ernest Otto Fuchs, a defendant herein, did prepare and issue a directive and cause it to be circulated;

22. On or about April 9, 1951, Carl Rude Lambert, a defendant herein, did attend and participate in a meeting at 405 De La Guerra Street, Santa Barbara, California;

23. On or about July 24, 1951, Oleta O'Connor Yates, a defendant herein, did attend and participate in a meeting at 124 West Sixth Street, Los Angeles, California.

A True Bill.

Robert B. Young III, Foreman.

Walter S. Binns, United States Attorney.

[fol. 10] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

No. 22131 CD

[Title Omitted]

MOTION TO DISMISS INDICTMENT—Filed January 3, 1952

To the United States of America, Plaintiff, and to Walter S. Binns, United States Attorney, Its Attorney:

Please take notice that the defendants William Schneiderman, Dorothy Rosenblum Healey, Albert Jason Lima, Oleta O'Connor Yates, Carl Rude Lambert, Philip Marshall

Connelly, Rose Chernin Kusnitz, Al Richmond, Ernest Otto Fox, Henry Steinberg, Loretta Starvus Stack, Mary Bernadette Doyle, Frank Efroim Spector, Frank Carlson, and Ben Dobbs, move the Court for an order dismissing the indictment herein upon the following grounds:

1. The indictment does not state facts sufficient to constitute an offense against the United States.

2. The indictment was not found within three years next after the alleged offense was committed.

3. The indictment, and the Smith Act, 18 U.S.C. Section 2385, and the general conspiracy statute, 18 U.S.C. Section 371, as construed and applied by the indictment, violate the [fol. 11] rights of these defendants under the Constitution of the United States in the folling particulars:

a. They abridge these defendants' freedom of speech and of the press, and their right peaceably to assemble and to petition the Government for redress of grievances, all in violation of the First Amendment.

b. They deprive these defendants of their liberty without due process of law in violation of the due process clause of the Fifth Amendment.

c. By reason of their vagueness, they deprive these defendants of their liberty without due process of law and abridge their rights of freedom of speech, freedom of press, freedom of assembly and the right to petition the Government for redress of *b*rievances, in violation of the First and Fifth Amendments.

d. The indictment, by reason of its vagueness and of the vagueness of the statutes on which it is based, and by reason of its failure to set forth all the necessary elements of the crime it purports to charge, deprives these defendants of their right, in a criminal prosecution, to be informed of the nature and cause of the accusation, in violation of the Sixth Amendment.

e. The indictment and the statutes on which it is based as construed and applied by the indictment, purport to exercise powers not delegated by the Constitution to the Government of the United States, but reserved to the people thereof by the Ninth and Tenth Amendments.

f. The statutes as construed and applied by the indictment constitute bills of attainder in violation of Article I, Section 9, Clause 3 of the Constitution.

4. The indictment purports to charge a conspiracy to violate the Smith Act, 18 U.S.C., Section 2385, which Act is [fol. 12] unconstitutional and void on its face in the following particulars:

a. It abridges freedom of speech and of the press, and the right of the people peaceably to assemble, and to petition the Government for a redress of grievances, all in violation of the First Amendment to the Constitution of the United States.

b. It deprives the defendants of liberty without due process of law, in violation of the due process clause of the Fifth Amendment to the Constitution of the United States.

c. It abridges freedom of speech and of the press, and the right of the people peaceably to assemble, and to petition the Government for a redress of grievances, and deprives the defendants of liberty without due process of law, all by reason of its vagueness and in violation of the First and Fifth Amendments to the Constitution of the United States.

d. It purports to exercise powers not delegated to the United States by the Constitution, but reserved thereby to the people of the United States, in violation of the Ninth and Tenth Amendments to the Constitution.

e. The statute as construed and applied by the indictment constitutes a bill of attainder in violation of Article I, Section 9, Clause 3 of the Constitution.

This motion is and will be based on Rule 12 of the Federal Rules of Criminal Procedure and all other applicable statutory and constitutional provisions, the affidavit of Ben Margolis, Esq., verified the 17th day of September, 1951, heretofore filed in the office of the Clerk in this Court, in support of the motion to dismiss the indictments in *United States of America v. Schneiderman, et al*, No. 21883 CD, and *United States of America v. Spector, et al*, No. 21940

CD, the affidavit of Ben Margolis, Esq., verified the 3rd [fol. 13] day of January, 1952, in support of this motion to dismiss on ground of vagueness, the memorandum of points and authorities in support of this motion, and upon all the records, files and proceedings heretofore had herein.

Leo Branton, Jr., Attorney for defendants Henry Steinberg, Ben Dobbs. Norman Leonard, Attorney for defendants Loretta Starvus Stack, Ernest Otto Fox, Frank Carlson. Ben Margolis, Attorney for defendants William Schneiderman, Oleta O'Connor Yates, Mary Bernadette Doyle. Alexander H. Schullman, Attorney for defendants Dorothy Rosenblum Healey, Philip Marshall Connelly. Leo A. Sullivan, Attorney for defendants Albert Jason Lima, Carl Rude Lambert. A. L. Wirin, Attorney for defendants Rose Chernin Kusnitz, Al Richmond, Frank Spector.

[fol. 14] No. 22131 CD

[Title Omitted]

AFFIDAVIT OF BEN MARGOLIS IN SUPPORT OF MOTION TO DISMISS INDICTMENT ON GROUND OF VAGUENESS

STATE OF CALIFORNIA,
County of Los Angeles, ss.

Ben Margolis, being first duly sworn, deposes and says:

I am one of the attorneys for the defendants on the motion herein to dismiss the indictment and I make this affidavit on behalf of all the defendants in support of said motion to dismiss.

In connection with that part of the motion which challenges the validity of the indictment by reason of its vagueness and indefiniteness, I hereby submit and allege certain facts of record which the Court is also respectfully requested to judicially notice, and which bear importantly on the issue here involved.

The original indictments returned against these defendants in July and August, 1951, alleged specifically that "From and on or about April 1, 1945, and continuously

thereafter up to and including the date of the filing of this indictment, in the Southern District of California, and elsewhere, . . . the defendants herein, unlawfully, wil- [fol. 15] fully, and knowingly did conspire with each other and with William Z. Foster, Eugene Dennis, John B. Williamson, Jacob Stachel, Robert G. Thompson, Benjamin J. Davis, Jr., Henry Winston, John Gates, Irving Potash, Gilbert Green, Carl Winter and Gus Hall, co-conspirators but not defendants herein, and with divers other persons to the grand jury unknown, to commit offenses against the United States prohibited by Section 2 of the Smith Act . . ."

On December 11, 1951, this Court dismissed the indictments upon motion of the defendants upon the principal ground that the said indictments failed to allege a specific unlawful intent required by the provisions of the law and the interpretation given the law by the United States Supreme Court. On or about December 21, 1951, the present indictment was returned against these same defendants. The new indictment alleges that "From on or about June 28, 1940 and continuously thereafter to and including the date of the filing of this indictment, . . . the defendants herein, wilfully and knowingly did conspire with each other and with William Z. Foster, Eugene Dennis, John B. Williamson, Jacob Stachel, Robert G. Thompson, Benjamin J. Davis, Jr., Henry Winston, John Gates, Irving Potash, Gilbert Green, Carl Winter and Gus Hall, co-conspirators but not defendants herein, and with divers other persons to the grand jury unknown, to commit offenses against the United States prohibited by Section 2 of the Smith Act . . ."

It will thus be noted that a material portion of the specific charge laid in the indictment has been varied as to date although the same defendants and the same co-conspirators are set forth in both indictments. The Government now has pleaded a fact in the indictment, dealing with an essential element of the offense, namely the date when the alleged conspiracy was formed, which is wholly inconsistent with the Government's theory as advanced in the prosecution in *United States v. Dennis, et al,* where the alleged co-conspirators were charged with forming the conspiracy in [fol. 16] April 1945 and with the theory of the Government in this prosecution which it has advanced throughout the

bail proceedings and all prior proceedings and in fact continues to press up to this very date. The result is to make it impossible for the defendants or their counsel to understand the true nature and cause of the accusation against them and to deprive them of their right to plead any judgment of acquittal which may be obtained in this case as a bar to any subsequent prosecution for the same offense. In its entirety, therefore, the indictment herein, because of its vagueness, indefiniteness and uncertainty, fails to advise the defendants of the nature of the charge which they have to meet; does not give them a fair opportunity to prepare their defense; and makes it impossible for this Court to determine whether or not the facts stated in the indictment are sufficient to support a conviction, all in violation of rights guaranteed to the defendants by the Sixth Amendment to the Constitution of the United States.

In further amplification I respectfully direct the attention of the Court to the opening statement on behalf of the Government in the trial of *United States v. Dennis, et al* (Joint Appendix, United States Court of Appeals, Vol. IV, pp. 3206-3224). In the course of that opening statement, the attorney for the United States stated:

> "At this Convention in July, 1945, these (T-1117) defendants said that they were reconstituting the Communist Party; that is, that they were setting up anew, something which, while not then existing in July 1945, had existed before. To do this, they dissolved the Communist Political Association and immediately reorganized as the Communist Party of the United States of America. By this act they made a deliberate choice between organizations which they declared were funda- [fol. 17] mentally different. In order to show that difference, and to show the nature and the choice, or the nature of the choice, rather, which these defendants then in 1945 deliberately made, it is necessary to go back beyond the holding of that Convention of 1945.
>
> "The Communist Party, which the defendants said they were reconstituting, had indeed previously existed. The Communists in this country, first established their party here shortly after the successful

Communist Revolution in Russia at the end of the first World War.

"The party adopted various names during its early days, but eventually it became the Communist Party of the United States of America, and so remained until its dissolution in 1944. At various times prior to that time, all of these defendants were members, and some of them were officers of that Communist Party.

"They dissolved that party, however, in 1944, (T-1118) and established in its stead the Communist Political Association, of which they also became members.

"This change was much more than a mere change in name from the Communist Party to the Communist Political Association. It was something fundamental. These defendants said that it was an abandonment by Communists in the United States of the objectives, the doctrines and the program which they advocated ever since their founding." (pp. 3209-10)

[fol. 18] It will be observed from the above quotation and from a complete examination of the prosecutor's opening statement, as well as a reading of the essential portions of the record, that the theory of the Government has been that the Communist Party and its program were abandoned in 1944; that at that time a fundamental change took place in the formation of the Communist Political Association; and that it was not until April 1945 and thereafter, when the Communist Political Association was dissolved and the Communist Party organized, that a conspiracy to organize and teach and advocate proscribed doctrines in violation of the Smith Act was formed.

This theory of the Government was pursued before the Court of Appeals (*United States* v. *Dennis*, 183 Fed. 2d 201) and before the United States Supreme Court (*Dennis* v. *United States*, 341 U. S. 494). Indeed, in the decision of the Supreme Court, Judge Vinson states in a footnote on page 498:

"Following the dissolution of the Communist International in 1943, the Communist Party of the United States dissolved and was reconstituted as the Communist Political Association. The program of this

Association was one of cooperation between labor and management, and, in general, one designed to achieve national unity and peace and prosperity in the post-war period."

In addition, in the prior proceedings against these defendants, the attorneys for the Government constantly argued that the defendants here were engaged in the same conspiracy which was found to exist in the *Dennis* case. Thus, in a memorandum submitted to the United States Supreme Court in *Stack, et al.* v. *Boyle*, the solicitor-general stated: "In applying Rule 46(c), we believe that a court should not ignore, as petitioners contend it should, the fact that these petitioners are charged with active and leading roles in the same Communist conspiracy which was found [fols. 19-36] to exist in *Dennis* v. *United States*, 341 U. S. 494, . . ." (Memorandum for Respondent in Reply to Petitioners' Motion of October 24, 1951, page 10, November 1951).

In the recent memorandum submitted by the Government in opposition to the motion to inspect documents, entitled in the new proceeding, the attorney for the United States stated (page 6): "In considering this question and other motions of the defense where they have sought a discovery of virtually the Government's entire case, we first wish to remind this Court that this case is one in which the evidence will be strikingly similar to the so-called Dennis case tried in New York. The defense has access to the twenty printed volumes of the record on appeal of the *Dennis* case. That surely *precludes* any great surprise upon the part of the Government."

From all of the aforesaid, the defendants are placed in the position where they cannot understand the nature and cause of the accusation made against them. It is impossible to determine whether the charge against the defendants is the formation of a conspiracy on the date when the Smith Act became effective or the formation of a conspiracy for the first time in April 1945 to commit offenses prohibited by the Smith Act. In view of the vagueness and indefiniteness of the indictment in these respects, it is respectfully submitted that the indictment is inherently defective and

should be dismissed in accordance with the aforesaid statutory and constitutional requirements.

Ben Margolis.

Subscribed and sworn to before me this 3rd day of January, 1951. Mary L. Rosenfield, Notary Public in and for Said County and State. My commission expires January 15, 1955.

[fol. 37] EXHIBIT "B" TO MOTION

A Comparison of the Old and New Indictments in the case of UNITED STATES v. SCHNEIDERMAN, et al.

Old indictment:	*New indictment:*
The Grand Jury charges:	The grand jury charges:
(1) From *and* on or about *April 1, 1945*, and continuously thereafter *up* to and including the date of the filing of this indictment, in the Southern District of California, and *elsewhere*, William Schneiderman, Dorothy Rosenblum Healey, Albert Jason Lima, Oleta O'Connor Yates, Carl Rude Lambert, Philip Marshall Connelly, Rose Chernin Kusnitz, Al Richmond, also known as Abraham Richman, Ernest Otto Fox, also known as Ernest Otto Fuchs, Henry Steinberg, Loretta Starvus Stack, and Mary Bernadette Doyle, the defendants herein, *unlawfully*, wilfully and knowingly did conspire with each other and with William Z.	(1) From on or about *June 28, 1940*, and continuously thereafter and including the date of the filing of this indictment, in the Southern District of California, *in the State of California, in the State of New York, and in other places to the grand jury unknown*, William Schneiderman, Dorothy Rosenblum Healey, Albert Jason Lima, Oleta O'Connor Yates, Carl Rude Lambert, Philip Marshall Connelly, Rose Chernin Kusnitz, Al Richmond, also known as Abraahm Richman, Ernest Otto Fox, also known as Ernest Otto Fuchs, Henry Steinberg, Loretta Starvus Stack, Mary Bernadette Doyle, *Frank Efroim Spector*,

Old indictment:

Foster, Eugene Dennis, John B. Williamson, Jacob Stachel, Robert G. Thompson, Benjamin J. Davis, Jr., Henry Winston, John Gates, Irving Potash, Gilbert Green, Carl Winter, and Gus Hall, co-conspirators but not defendants herein, and with divers other persons to the grand jury unknown, to commit offenses against the United States prohibited by Section 2 of the Smith Act, 54 Stat. 671, 18 U.S.C. (1946 Ed.) 10, and 18 U.S.C. (1948 Ed.) 2385, *by so conspiring* (1) *unlawfully,* wilfully and knowingly to advocate and teach the duty and necesssity of overthrowing the Government of the United States by Force and violence, and (2) *unlawfully,* wilfully, and knowingly to organize and help organize as the Communist Party of the United States of America a society, group, and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence, in violation of Section 3 of the Smith Act, 54 Stat. 671, 18 U.S.C. (1946 Ed.) 11, and 18 U.S.C. (1948 Ed.) 371;

[fol. 38] (Note: There is also a difference, not in-

New indictment:

Frank Carlson, also known as Solomon Szkolnick, and Ben Dobbs, also known as Benjamin Isgur, the defendants herein, wilfully and knowingly did conspire with each other and with William Z. Foster, Eugene Dennis, John B. Williamson, Jacob Stachel, Robert G. Thompson, Benjamin J. Davis, Jr., Henry Winston, John Gates, Irving Potash, Gilbert Green, Carl Winter, and Gus Hall, co-conspirators but not defendants herein, and with divers other persons to the grand jury unknown, to commit offenses against the United States prohibited by Section 2 of the Smith Act (54 Stat. 671), U.S.C., Title 18, Sec. 10 (1946 Ed.), and U.S.C., Title 18, Sec. 2385 (1948 Ed.), in violation of U.S.C., Title 18, Sec. 11 (1946 Ed.), being Section 3 of the said Smith Act *while said section of said act remained effective, and thereafter* in violation of U.S.C. Title 18, Sec. 371 (1948 Ed.), by (1) wilfully and knowingly advocating and teaching the duty and necessity of overthrowing the Government of the United States by force and violence, *with the intent of causing the aforesaid overthrow and*

Old indictment:

dicated by underlining, in the way in which sections of the Smith Act are referred to; however, the same sections are mentioned in both indictments.)

(2) It was part of said conspiracy that *said defendants and co*-conspirators would become members, officers, *and* functionaries of said Party, knowing the purposes of the Party, and in such capacities would assume leadership in said party and responsibility for carrying out its policies and activities *up* to and including the date of the filing of this indictment;

(3) It was further part of said conspiracy that said defendants and co-conspir-

New indictment:

destruction of the Government of the United States by force and violence as speedily as circumstances would permit; and by (2) wilfully and knowingly organizing, and helping to organize, as [fol. 38] the Communist Party of the United States of America a society, group, and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence, *with the intent of causing the aforesaid overthrow and destruction of the Government of the United States by force and violence as speedily as circumstances would permit;*

(2) It was *a* part of said conspiracy that *the* conspirators would become members, officers, *or* functionaries of said *Communist* Party, knowing the purposes of the *said Communist* Party, and in such capacities would assume leadership in said *Communist* Party and responsibility for carrying out its policies and activities to and including the date of the filing of this indictment;

(3) It was further a part of said conspiracy that said defendants and co-conspir-

Old indictment:

ators would cause to be organized Groups, Clubs, Sections, District and State Units of said Party in the State of California *and elsewhere* and would recruit and encourage recruitment of members *of* said Party, concentrating on recruiting persons employed in key basic industries and plants;

(4) It was further a part of said conspiracy that said defendants and co-conspirators would publish and circulate and cause to be published and circulated books, articles, magazines, and newspapers teaching and advocating the duty and necessity of overthrowing and destroying the Government of the United States by force and violence;

(5) It was further a part of said conspiracy that said defendants and co-conspirators would write and cause to be written articles and directives in publications of the Communist Party of the United States of America, including, but not limited to "Political Affairs," "Daily People's World," "Daily Worker," and "The Work-

New inlictment:

ators would cause to be organized groups, clubs, sections, and district, state *and national* units of said party in the State of California, *in the State of New York, and other places to the grand jury unknown,* and would recruit, and encourage recruitment of, members *to* said party, concentrating on recruiting. persons employed in key basic industries and plants;

(4)

(identical—with following adidtion:)

as speedily as circumstances would permit;

(5)

(identical—through portion appearing on this page)

[fol. 39] advocating the *duty and* necessity of overthrow-

Old indictment:

er," teaching and advocating the necessity of overthrowing the government of the United States by force and violence;

(6) It was further a part of said conspiracy that said defendants would conduct and cause to be conducted schools and classes *for indoctrination of recruits and members of said Party* in the principles of Marxism-Leninism in which would be taught and advocated the duty and necessity of overthrowing the Government of the United States by force and violence as speedily as circumstances permit;

(7) It was further a part of said conspiracy that said defendants and co-conspirators would agree upon and carry into effect detailed plans for the vital parts of the Communist Party of the United States of America to go underground in the event of emergency and from said underground position to continue in all respects the conspiracy described in paragraph (1);

(8) It was further a part of said conspiracy that said defendants and co-conspira-

New inlictment:

ing *and destroying* the Government of the United States by force and violence *as speedily as circumstances would permit;*

(6) It was further a part of said conspiracy that said defendants *and co-conspirators* would conduct, and cause to be conducted, schools and classes *in which recruits and members of said Communist Party would be indoctrinated* in the principles of Marxism-Leninism and in which the duty and necessity of overthrowing *and destroying* the Government of the United States by force and violence as speedily as circumstances *would* permit would be taught and advocated;

(7)

(identical—with following addition:)

of this indictment;

(8) It was further a part of said conspiracy that said defendants and co-conspira-

Old indictment:

tors would use false names, *passports,* and *other* false documents in order to conceal their identities and activities as members and functionaries of said Party;

(9) It was further a part of said conspiracy that defendants and co-conspirators would do other and further things to conceal the existence and operations of said conspiracy; and

In *pursuance* of said conspiracy and to effect the objects thereof *in the Southern District of California,* the defendants and co-conspirators, did commit, among others, the following:

[fol. 40] Overt Acts

(No corresponding allegation.)

(No corresponding allegation.)

New indictment:

tors would use false names and false documents in order to conceal their identities and activities as members and functionaries of said party; and

(No corresponding allegation.)

In *furtherance* of said conspiracy and to effect the objects thereof, the defendants and co-conspirators did commit, among others, the following:

Overt Acts

1. On or about January 31, 1941, William Schneiderman, a defendant herein, did attend and participate in a meeting held at the Danish Hall, 164 Eleventh Street, Oakland, California.

2. On or about May 12, 1942, William Schneiderman, a defendant herein, did attend and participate in a meeting held at the Serbian Hall, 225 Valencia Street, San Francisco, California.

Old indictment:	*New inlictment:*
(No corresponding allegation.)	3. On or about June 27, 1943, William Schneiderman, Oleta O'Connor Yates, Albert Jason Lima, Carl Rude Lambert, and Henry Steinberg, defendants herein, did attend and participate in a convention of the Communist Party of the State of California, held at 121 Haight Street, San Francisco, California.
(No corresponding allegation.)	4. On or about October 17, 1943, William Schneiderman, Oleta O'Connor Yates and Carl Rude Lambert, defendants herein, did attend and participate in a convention of the Communist Party for Alameda County, held at 2229 Telegraph Avenue, Oakland, California.
(No corresponding allegation.)	5. On or about May, 1944, William Schneiderman and Oleta O'Connor Yates, defendants herein, did attend a National Convention of the Communist Party of the United States, held at the Riverside Plaza Hotel, New York City.
(No corresponding allegation.)	6. On or about May, 1945, Wiliiam Schneiderman, Dorothy Rosenblum Healey, Oleta O'Connor Yates, Albert Jason Lima and Ernest Otto Fox, also known as Ernest Otto Fuchs, defend-

Old indictment.	*New indictment:*
	ants herein, did attend and participate in a meeting held at the Danish Auditorium, 1359 W. 24th Street, Los Angeles, California.
(No corresponding allegation.)	7. On or about July 26, 27, and 28, 1945, William Schneiderman, Loretta Starvus Stack and Albert Jason Lima, defendants herein, did attend a National convention of the Communist Party of the United States, held in New York City.
[fol. 41] (No corresponding allegation.)	
	8. On or about August 18 and 19, 1945, William Schneiderman, Carl Rude Lambert, Loretta Starvus Stack, Al Richmond, also known as Abraham Richman, Albert Jason Lima, and Frank Carlson, also known as Solomon Szkolnick, did attend and participate in a convention of the Northern Section of the Communist Party of the State of California, held at 1621 Market Street, San Francisco, California.
1.	9. On or about July 17 and 18, 1948, William Schneiderman, Dorothy Rosenblum Healey, Albert Jason Lima, Oleta O'Connor Yates, Carl Rude Lambert, Al Richmond, also known as Abraham

Old indictment:

New indictment:

Richman, Loretta Starvus Stack, and Mary Bernadette Doyle, defendants herein, did attend and participate in a convention of the Communist Party of the State of California *held* at Park Manor, Sixth Street and Western Avenue, Los Angeles, California.

2. 10. On or about August 20, 1948, Mary Bernadette Doyle, a defendant herein, did attend and participate in a meeting of the Morgan Hull Club in San Diego, California.

3. 11. On or about August 21, 1948, Loretta Starvus Stack, a defendant herein, did prepare and issue a directive and cause it to be circulated by the California State Committee of the Communist Party.

4. 12. On or about August 21, 1948, Al Richmond, also known as Abraham Richman, a defendant herein, did issue a directive and cause it to be circulated by the California State Committee of the Communist Party.

5. 13. On or about January 21, 1949, Henry Steinberg, a defendant herein, did attend and participate in a meeting.

6. 14. On or about May 20, 1949, Rose Chernin Kusnitz,

Old indictment:

New indictment:

a defendant herein, did attend and participate in a meeting held at 847 South Grand Avenue, Los Angeles, California.

7.

15. On or about December 7, 1949, William Schneiderman and Dorothy Rosenblum Healey, defendants herein, did attend and participate in a meeting at Park View Manor, 2200 West Seventh Street, Los Angeles, California.

[fols. 42-46] 8.

16. On or about January 20, 1950, William Schneiderman, a defendant herein, did attend and participate in a meeting at Embassy Auditorium, Los Angeles, California.

9.

17. On or about February 15, 1950, Mary Bernadette Doyle, a defendant herein, did attend and participate in a meeting held at 7891 Normandie Street, San Diego, California.

10.

18. On or about April 6, 1950, William Schneiderman, a defendant herein, did attend and participate in a meeting at 3875 City Terrace Boulevard, Los Angeles, California.

11.

19. On or about June 12, 1950, Albert Jason Lima, a defendant herein, did attend and participate in a meeting

Old indictment:	*New indictment:*
	at 2200 West Seventh Street, Los Angeles, California.
12.	20. On or about June 24, 1950, Philip Marshall Connelly, Mary Bernardette Doyle, and Albert Jason Lima, defendants herein, did attend and participate in a meeting at Park Manor, 607 South Western Avenue, Los Angeles, California.
13.	21. On or about November, 1950, Ernest Otto Fox, also known as Ernest Otto Fuchs, a defendant herein, did prepare and issue a directive and cause it to be circulated.
14.	22. On or about April 9, 1951, Carl Rude Lambert, a defendant herein, did attend and participate in a meeting at 405 De La Guerra Street, Santa Barbara, California.
15.	23. On or about July 24, 1951, Oleta O'Connor Yates, a defendant herein, did attend and participate in a meeting at 124 West Sixth Street, Los Angeles, California.
	(Note: No overt acts were alleged with respect to Spector and Dobbs.)
A True Bill. Robert B. Young, Foreman.	A True Bill. ——, Foreman.
Ernest A. Tolin, United	Walter S. Binns, United

[fol. 47] IN THE UNITED STATES DISTRICT COURT

[Title omitted]

No. 21883 CD
No. 21940 CD

AFFIDAVIT IN SUPPORT OF MOTION TO DISMISS INDICTMENTS—

Filed September 18, 1951

[fol. 48] STATE OF CALIFORNIA,
County of Los Angeles, ss:

Ben Margolis, being first duly sworn, deposes and says:

I am one of the attorneys for the defendants on the motion herein to dismiss the indictments and I make this affidavit on behalf of all the defendants in support of the said motion to dismiss the indictments in the above entitled causes.

In connection with that portion of the motion here which charges that the indictments were not found within three years next after the alleged offenses were committed, I hereby submit the following facts of record as to the date of the organization of the Communist Party of the United States of America, and in addition respectfully request the Court to take judicial notice of the said facts of record in connection with the motion herein:

1. In the indictment herein, William Z. Foster, Eugene Dennis, John B. Williamson, Jacob Stachel, Robert G. Thompson, Benjamin J. Davis, Jr., Henry Winston, John Gates, Irving Potash, Gilbert Green, Carl Winter and Gus Hall are named as co-conspirators but not defendants. On July 20, 1948 the aforesaid persons were indicted in the Southern District of New York, charged with a conspiracy to violate the Smith Act, 18 U. S. C. Section 2385 (*United States of America v. Dennis, et al.*, Joint Appendix filed in the United States Court of Appeals for the Second Circuit, Vol. 1, p. 7).

2. It was alleged in the aforesaid indictment, among other things, that:

"2. It was part of said conspiracy that said defendants would convene, in the Southern District of New [illegible] of the National Board of the Com-

munist Political Association on or about June 2, 1945, [fol. 49] to adopt a draft resolution for the purpose of bringing about the dissolution of the Communist Political Association, and for the purpose of organizing as the Communist Party of the United States of America a society, group, and assembly of persons dedicated to the Marxist-Leninist principles of the overthrow and destruction of the Government of the United States by force and violence.

"3. It was further a part of said conspiracy that said defendants would thereafter convene, in the Southern District of New York, a meeting of the National Committee of the Communist Political Association on or about June 18, 1945, to amend and adopt said draft resolution.

"4. It was further a part of said conspiracy that said defendants would thereafter cause to be convened, in the Southern District of New York, a special National Convention of the Communist Political Association on or about July 26, 1945, for the purpose of considering and acting upon said resolution as amended.

"5. It was further a part of said conspiracy that said defendants would induce the delegates to said National Convention to dissolve the Communist Political Association.

"6. It was further a part of said conspiracy that said defendants would bring about the organization of the Communist Party of the United States of America as a society, group, and assembly of persons to teach and advocate the overthrow and destruction of the Government of the United States by force and violence; and [fol. 50] would cause said Convention to adopt a Constitution basing said Party upon the principles of Marxism-Leninism."—*United States v. Foster*, 9 F. R. D. 367, 375 (D. C. N. Y., 1949)

3. In the opening statement to the jury at the trial under the indictment above mentioned, on behalf of the United States of America the United States Attorney, John F. X. McGohey, stated:

"The remaining nine paragraphs of the indictment set forth the details of the indictment. Briefly, these

paragraphs charge that these defendants brought about meetings in New York City in June and July of 1945 of the National Committee and the National Board and the National Convention of the Communist Political Association, in order to dissolve the Association and to organize in its stead the Communist Party of the United States of America. They charged that it was a part of the conspiracy that these defendants would assume leadership of the Communist Party of the United States of America; it is further charged that the defendants would organize clubs, district and state units of their party; that they would recruit new members of their party, and that they, the defendants, would publish books, magazines and newspapers; that they would organize schools and classes, in all of which it was planned that there would be taught and advocated the Marxist-Leninist principles of the duty and necessity of overthrowing and destroying the Government of the United States by force and violence.

"Now, that is what we charge. To support that [fol. 51] charge we propose to prove by witnesses on that stand, and documents which they will introduce, just what these defendants caused others under their supervision and control to do, and to say what the defendants actually did at that Convention in July, 1945, according to their own statements was to reconstitute the Communist Party of the United States of America; to educate the working class in the course of its day-to-day struggles, for its historic mission, the establishment of Socialism. They based the party upon the principles of Marxism-Leninism."—*United States of America v. Dennis, et al.*, Joint Appendix filed in the United States Circuit Court of Appeals for the Second Circuit, Vol. 4, p. 3208.

4. In the opening statements to the jury on behalf of defendants, one of the defendants in the aforementioned trial, Eugene Dennis, stated:

"The defense will prove that these decisions were democratically discussed by the members of the Com-

munist Party and ratified by the delegates to our July 1945 National Convention.

* * * * * * *

"Ladies and gentlemen of the jury, in July and June 1945 when we defendants allegedly met, according to the prosecution, to teach and to advocate force and violence, our concern, we will really show, was totally different from what is charged by the prosecution. We will establish that at these meetings, to which the indictment refers, we Communists paid tribute not only to the Americans who had died in World War II but to [fol. 52] the anti-Fascists of all lands and to the victims of Fascist force and violence who at that very time were being liberated from the Nazi concentration camps. We will establish from authentic documents adopted at our 1945 National Convention that we Communist leaders in our party pledged ourselves to do all in our power to save our people and our country from the consequences of an American Reichstag fire trial and an American version of the Japanese system of punishing those alleged to hold dangerous thoughts. The prosecution asks this jury for what amounts to a preventative conviction, in order that we Communist leaders may be put under what the Nazis called protective custody. I ask the jury to weigh the prosecution's case against the proof we defendants will offer to establish that we have taught and advocated the duty and necessity to prevent the force and violence of Fascism, imperialists of war and lynching and anti-semitism. I ask you to weigh carefully our sincere offer of proof which demonstrates that we Communists are second to none in our devotion to our people and to our country, and that we teach and advocate and practice a program of peace, of democracy, equality, economic security and social progress."—*United States of America v. Dennis, et al.*, Joint Appendix filed in the United States Circuit Court of Appeals for the Second Circuit, Vol. 4, pp. 3227, 3249.

5. In the opening statement to the jury made by counsel for the defendants Williamson and Green in the aforemen- [fol. 53] tioned trial, the following statement was made:

"They are on trial, as Mr. McGohey indicated, because the Communist Party adopted certain principles, the principles of Marxism-Leninism, or reconstituted itself in the year 1945. Now Mr. McGohey says that these principles were contained in some books. He mentioned four of the books. But, as this trial develops, you will learn, as you will have to, that the principles of Marxism-Leninism are found, not in four books, not even in a hundred books, but in hundreds of books that have been written well over a period of a hundred years."—*United States of America v. Dennis, et al.*, Joint Appendix filed in the United States Circuit Court of Appeals for the Second Circuit, Vol. 4, p. 3287.

6. In the aforementioned trial the government offered as a witness in its behalf Louis Francis Budenz, and the said witness testified as follows:

"By Mr. McGohey:

"Q. Now Mr. Budenz, after this meeting of the National Committee was there a National Convention of the Communist Political Association held? A. Yes, sir, there was.

"Q. And will you tell us where it was held and when? A. It was held beginning July 26th at Fraternal Club House.

"Q. July 26th in what year? A. 1945.

"Q. And at Fraternal Club House? A. In New York City.

"Q. Do you know whereabouts in New York City that is? A. It is in the 40s, yes, sir.

[fol. 54] "Q. You are not positive of the address, are you? A. No, sir. I have been there many times but I am not positive of the address at the moment.

"(Short recess.)

"By Mr. McGohey:

"Q. Mr. Budenz, just before the recess you had told us that the Convention of the Communist Political Association was held in New York City commencing on July 26, did you not? A. Yes, sir.

"Q. Did you attend that convention? A. Irregularly. I was there very infrequently because I was mostly at the Daily Worker.

"Q. And during that period were you reporting or causing to be published in the Daily Worker the proceedings, the occurrences at the Convention? A. Yes, sir.

"Q. But you were physically present from time to time at the Convention, were you not? A. I went in to the Convention for short periods now and then.

"Mr. Gladstein: I didn't hear the balance of the answer.

"(Answer read.)

"Q. Do you know whether there was a section reserved for the press at that Convention? A. No, sir, there was not.

"Q. Do you know whether any representatives of the general public press were admitted to that Convention? A. They were prohibited.

"Q. Now what did that convention do? A. That convention re-established the Communist Political Association.

[fol. 55] "Q. It re-established it?

"The Court: It what?

"The Witness: It established the—abolished the Communist Political Association.

"Q. I am talking of the Convention of July 1945, Mr. Budenz. A. It abolished the Communist Political Association and re-established the Communist Party. That was a verbal slip. Re-established the Communist Party of the United States and wrote a Constitution for that Party.

"Q. And did it elect, without describing who it

elected, if any,—did it elect officers of the new Communist Party? A. Yes, sir, it did.

"By the Court:

"Q. That same body of people did both those things? A. (Witness nodded.)

"Q. Liquidated the old CPA and reconstituted the Communist Party of the United States? A. That is correct, your Honor.

"Q. The same group of men? A. That is correct, your Honor."—*United States of America v. Dennis, et al*, Joint Appendix filed in the United States Circuit Court of Appeals for the Second Circuit, Vol. 5, pp. 3612, 3613.

7. In the trial of the above indictment the defendants offered as a witness on their behalf, Benjamin J. Davis, and said witness testified as follows:

"Q. Did you thereafter, Mr. Davis, attend the special convention of the Communist Political Association which was held on July 26 to July 28, 1945? A. I did.

* * * * * * *

[fols. 56-65] "Q. Mr. Davis, I show you Exhibit 25-A, which includes the resolution adopted by the Convention of the Communist Party on July 28, 1945, and ask you whether subdivision 7 in that resolution was added to the resolution which came out of the National Committee in June on the basis of the report which you made to the convention after the panel discussion had been completed? A. Yes."—*United States of America v. Dennis, et al*, Joint Appendix filed in the United States Circuit Court of Appeals for the Second Circuit, Vol. 11, pp. 8405, 8410.

It appears from the aforementioned facts of record that the Communist Party of the United States of America was organized as such Party on July 28, 1945 at a National Convention held in New York City from July 26 to July 28, 1945.

Ben Margolis.

Subscribed and sworn to before me this 17th day of September, 1951. Mary L. Rosenfield, Notary Public in and for said County and State. My Commission Expires Jan. 15, 1955.

[fol. 66] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

[Title omitted]

No. 22131 CD

MOTION FOR BILL OF PARTICULARS—Filed January 4, 1952

To the United States of America, Plaintiff, and to Walter S. Binns, United States Attorney, Its Attorney:

Please take notice, that the defendants William Schneiderman, Dorothy Rosenblum Healey, Albert Jason Lima, Oleta O'Connor Yates, Carl Rude Lambert, Philip Marshall Connelly, Rose Chernin Kusnitz, Al Richmond, Ernest Otto Fox, Henry Steinberg, Loretta Starvus Stack, Mary Bernadette Doyle, Frank Efroim Spector, Frank Carlson and Ben Dobbs, move the Court for an order directing the plaintiff, United States of America, by its attorney, the United States Attorney for the Southern District of California, to furnish and file a bill of particulars of the indictment herein in the following respects:

1. Did the conspiracy charged begin on or about June 28, 1940 or did it allegedly become illegal upon that date because of the enactment of the Smith Act upon which the indictment is based?

2. If the alleged conspiracy was in existence prior to June 28, 1940, state when it was formed and when each of [fols. 67-82] the defendants joined said alleged conspiracy.

[fol. 83] IN THE UNITED STATES DISTRICT COURT

No. 22131 CD

[Title omitted]

MOTION TO DISMISS INDICTMENT AS TO DEFENDANT SCHNEIDERMAN AS BARRED BY RES JUDICATA—Filed January 7, 1952

To the United States of America, Plaintiff, and to Walter S. Binns, United States Attorney, Its Attorney:

Please take notice that the defendant William Schneiderman moves the Court for an order dismissing the indictment herein, as to him, upon the following grounds:

1. The indictment is barred by res judicata as to the defendant William Schneiderman and the United States is, as to the defendant William Schneiderman, estopped to prosecute said indictment, by reason of the following matters and in the following particulars:

2. On June 30, 1939, the United States of America, plaintiff herein, filed in the Southern Division of the United States District Court for the Northern District of California a complaint against William Schneiderman, defendand there and defendant herein, charging this defendant with the same matters and offenses alleged in the present indictment and asking as relief that the defendant's naturalization as a citizen of the United States, which had been [fol. 84] awarded by the United States District Court for the Southern District of California, Central Division, on June 10, 1927, be surrendered and cancelled and adjudged fraudulently and illegally procured. The cause initiated by said complaint became No. 21257-R in the said Southern Division of said United States District Court for the Northern District of California, was heard before the Honorable Michael J. Roche, sitting as a judge of said court, and further heard on appeal by the United States Circuit Court of Appeals for the Ninth Circuit, and on certiorari by the Supreme Court of the United States, and the issues therein finally adjudicated and determined against the United

States and in favor of the defendant William Schneiderman.

3. That the following issues, which the same plaintiff seeks to relitigate against the same defendant in the present indictment, were framed by the pleadings in the aforesaid denaturalization case, that the United States had an opportunity to be heard and was heard thereon and presented evidence and argument, and were finally and conclusively adjudicated against the United States and in favor of the defendant William Schneiderman:

A. That the Communist Party of the United States of America is not a society, group and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence.

B. That the Communist Party of the United States of America does not believe in or advocate the overthrow of the Government of the United States by force and violence and that the association of the defendant William Schneiderman with other persons in said Party therefore does not constitute a conspiracy wilfully and knowingly to advocate and teach the duty and necessity of overthrowing the Government of the United States by force and violence, with the intent of [fol. 85] causing the aforesaid overthrow and destruction of the Government of the United States by force and violence as soon as circumstances would permit.

C. That the defendant William Schneiderman, at the time he joined the Communist Party of the United States and for many years thereafter, did not believe in or advocate the overthrow of the Government of the United States by force and violence, and furthermore did not believe that the Communist Party of the United States believed in or advocated such doctrine, and consequently his membership in and association with said Party and efforts to promote the views and interests of said Party could not have constituted, on his part, a conspiracy to advocate the overthrow of the Government of the United States by force and violence, or to organize a society, group or assembly of persons who teach and advocate said doctrine, and could not

have been with the intent, on the part of the defendant William Schneiderman, to bring about the overthrow and destruction of the Government of the United States by force and violence as speedily as circumstances would permit.

4. In the course of the litigation of the aforesaid denaturalization case, the following intermediate questions of fact were put in issue, the United States had an opportunity to be heard thereon and was heard thereon both by evidence and argument, and said question were finally and conclusively determined adversely to the United States and in favor of the defendant William Schneiderman:

A. That to become a member, officer or functionary of the Communist Party, knowing the purposes of said Communist Party, and in such capacities to assume leadership in said Communist Party and responsibility [fol. 86] for carrying out its policies and activities, is a lawful activity, does not show lack of attachment to the principles of the Constitution of the United States, and does not show belief in, advocacy of, or intent to cause, overthrow of the Government of the United States by force and violence.

B. That to cause to be organized groups, clubs, section, and district, state and national units of said Communist Party, and to recruit and encourage recruitment of members to said Party, is a lawful activity, does not show lack of attachment to the principles of the Constitution of the United States, and does not show belief in, advocacy of, or intent to cause, overthrow of the Government of the United States by force and violence.

C. That to publish and circulate, and cause to be published and circulated, books, articles, magazines and newspapers, teaching and advocating the principles and program of the Communist Party, does not constitute the publication and circulation of materials teaching and advocating the duty and necessity of overthrowing the Government of the United States by force and violence, but, on the contrary, is a lawful activity, which does not show lack of attachment to

the principles of the Constitution of the United States, and which does not show belief in, advocacy of, or intent to cause, overthrow of the Government of the United States by force and violence.

D. That to write and cause to be written, articles and directives in publications of the Communist Party of the United States, advocating the principles and program of said Party, does not constitute teaching and advocating the overthrow and destruction of the Government of the United States by force and violence, but, on the contrary, is a lawful activity, which does not show lack of attachment to the principles of the [fol. 87] Constitution of the United States, and which does not show belief in, advocacy of, or intent to cause, overthrow of the Government of the United States by force and violence.

E. That to conduct and cause to be conducted schools and classes in which recruits and members of said Communist Party are indoctrinated in the principles of Marxism-Leninism does not constitute teaching and advocacy, or conspiracy to teach and advocate, the duty and necessity of overthrowing the Government of the United States by force and violence as speedily as circumstances would permit, but, on the contrary, is a lawful activity, which does not show lack of attachment to the principles of the Constitution of the United States, and which does not show belief in, advocacy of, or intent to cause, overthrow of the Government of the United States by force and violence.

5. The claim of the plaintiff United States that the conspiracy herein is the same conspiracy charged in *Dennis* v. *United States*, the allegation of the present indictment that the defendants in that case were co-conspirators with the present defendants, and the list of documents which the United States has filed notice of intention to produce, all demonstrate that certain other issues, not clearly shown upon the face of the indictment standing alone, are nevertheless issues which the Government intends to relitigate against the defendant Schneiderman and the Government could not hope to obtain a conviction of the defendant Schneiderman without relitigating such issues. These

issues also arose during the litigation of the aforesaid denaturalization case, as issues of fact, at which time the United States had an opportunity to be heard and was heard thereon both by evidence and argument, and the decision of said denaturalization case in favor of the defendant necessarily comprehended a final and conclusive adjudication of said issues adversely to the Government's [fol. 88] contentions and in favor of the defendant Schneiderman. These issues include:

A. That the term "Marxism-Leninism" does not mean or imply, and is not understood by members of the Communist Party and particularly by the defendant Schneiderman to mean or imply, overthrow of the Government of the United States by force and violence.

B. That the principles of Marxism-Leninism do not include overthrow of the Government of the United States by force and violence and belief in or advocacy of such principles does not amount to belief in or advocacy of such overthrow.

C. That the term "dictatorship of the proletariat" does not mean or imply, and is not understood by members of the Communist Party and particularly by defendant Schneiderman as meaning or implying, overthrow of the Government of the United States by force and violence, and belief in or advocacy of a dictatorship of the proletariat does not amount to belief in or advocacy of such overthrow.

D. That the following documents and writings, introduced as Government exhibits in the denaturalization case, do not advocate the overthrow of the Government of the United States by force and violence, nor does the circulation of such documents and writings, or membership in a party which circulates them, show belief in or advocacy of, or intent to bring about, the overthrow of the Government of the United States by force and violence, or lack of attachment to the principles of the Constitution of the United States:

(1) Constitution of the Communist Party of the United States of America, 1938 (Government's Exhibit [illegible] denaturalization case).

[fol. 89] (2) Programme of the Communist International, adopted 1928 (Government's Exhibit 6).

(3) Manifesto of the Communist Party by Marx and Engels (Government's Exhibit 7).

(4) State and Revolution by Lenin (Government's Exhibit 8).

(5) Left-Wing Communism: an Infantile Disorder, by Lenin (Government's Exhibit 9).

(6) Programme of the Young Communist International (Government's Exhibit 10).

(7) The Theory and Practice of Leninism, by Stalin (Government's Exhibit 11).

(8) The 4th National Convention, Workers (Communist) Party of America, Chicago, 1925 (Government's Exhibit 12).

(9) The Second Year of the Workers Party of America, by C. E. Ruthenberg (Government's Exhibit 13).

(10) Acceptance Speeches of William Z. Foster and Benjamin Gitlow, 1928 (Government's Exhibit 14).

(11) The Platform of the Class Struggle (Workers Library Publishers), 1928 (Government's Exhibit 15).

(12) A B C of Communism, by Bucharin and Preobaschensky (Government's Exhibit 16).

(13) The International of Youth (Government's Exhibit 17).

(14) Why Communism? by M. J. Olgin (Government's Exhibit 18).

E. That the fact that the Communist Party adopted the principles of Marxism-Leninism, and the alleged goal of bringing about a dictatorship of the proletariat, and circulated the documents and writings listed in the preceding paragraph, and others like them, does not [fol. 90] show that the Party believed in or advocated, or conspired to advocate, or intended to advocate or to bring about, overthrow of the Government by force and violence.

F. That the fact that the defendant William Schneiderman believed in and advocated Marxism-Leninism and circulated the documents and writings listed in Paragraph D, supra, and others like them, and was an active member and leader of the Communist Party, does not show that he believed in or advocated, or conspired to advocate, or intended to advocate or to bring about, overthrow of the Government of the United States by force and violence.

G. That the principles and program of the Third International, also known as the Communist International, did not include overthrow of the Government of the United States by force and violence, and that the affiliation of the Communist Party of the United States to said International, during the period when it was so affiliated, did not show belief in, or advocacy of, or intent to bring about, such overthrow, and that membership in the Communist Party, during the period of such affiliation, with knowledge of such affiliation, did not show belief in, or advocacy of, or intent to bring about, such overthrow, and did not show lack of attachment to the principles of the Constitution of the United States.

H. Belief in Marxism-Leninism, advocacy of Marxism-Leninism and of a dictatorship of the proletariat, circulation of writings like those listed in Paragraph D, active membership and leadership in the Communist Party, membership in an affiliate of the Communist International, and attachment to its principles and program, are all, individually and taken together, insufficient to show intent to cause the over- [fol. 91] throw of the Government *of the Government* of the United States by force and violence as speedily as circumstances would permit.

6. The defendant William Schneiderman, having been compelled to litigate such issues at the expenditure of great effort, time and expense, ought not now to be compelled to relitigate the same issues in defense of this indictment.

7. The plaintiff United States, having once had its full day in court in regard to said issues, and having been fully

heard in regard thereto, ought not now to be given a second opportunity to relitigate the same matters and questions.

8. The defendant William Schneiderman, following the decisions of the United States Supreme Court in the said denaturalization proceeding, and following the acquiescence of the United States in said decision by its failure to take any other or further steps to accomplish the denaturalization of the defendant Schneiderman, had a right to rely and did rely on said decision as a final and conclusive adjudication with respect to each and all of the matters herewith referred to and that his political beliefs, advocacy, activities and affiliations were unlawful and protected by the United States Constitution and the Bill of Rights, and that he could continue them without fear of further harassment by the Government; the United States, under these circumstances, is now estopped to assert that the continuation of said political beliefs, advocacy, activities and affiliations, in reliance on said decision, constituted a violation of the criminal laws of the United States, and particularly is so estopped with respect to each and all of the matters set forth in the indictment herein.

This motion is and will be based on Rule 12 of the Federal Rules of Criminal Procedure and all other applicable statutory and constitutional provisions, the transcript of record on appeal submitted with this motion and made a part hereof, the reported opinions in said case in 33 F. Supp. 510, [fols. 92-96] 119 F. 2d 500, and 320 U. S. 118, the memorandum of points and authorities in support of this motion, and upon all the records, files and proceedings heretofore had under this indictment and under the preceding indictments, *United States* v. *William Schneiderman, et al.*, No. 21883 CD, and *United States* v. *Frank Spector, et al.*, No. 21940 CD.

Ben Margolis, Attorney for defendant William Schneiderman.

[fol. 97] [File endorsement omitted]

IN THE UNITED STATES DISTRICT COURT

No. 22131 CD

[Title omitted]

MOTION TO DISMISS INDICTMENT AS TO DEFENDANTS HEALEY, LIMA, YATES, LAMBERT, CONNOLLY, KUSNITZ, RICHMOND, FOX, STEINBERG, STACK, DOYLE, SPECTOR, CARLSON AND DOBBS AS BARRED BY RES JUDICATA—Filed January 7, 1952

To the United States of America, Plaintiff, and to Walter S. Binns, United States Attorney, Its Attorney:

Please take notice that the defendants Dorothy Rosenblum Healey, Albert Jason Lima, Oleta O'Connor Yates, Carl Rude Lambert, Philip Marshall Connelly, Rose Chernin Kusnitz, Al Richmond, Ernest Otto Fox, Henry Steinberg, Loretta Starvus Stack, Mary Bernadette Doyle, Frank Efroim Spector, Frank Carlson, and Ben Dobbs, move the Court for an order dismissing the indictment herein, as to them, upon the following grounds:

1. The indictment is barred by res judicata as to the defendants Dorothy Rosenblum Healey, Albert Jason Lima, Oleta O'Connor Yates, Carl Rude Lambert, Philip Marshall Connelly, Rose Chernin Kusnitz, Al Richmond, Ernest Otto Fox, Henry Steinberg, Loretta Starvus Stack, Mary Bernadette Doyle, Frank Efroim Spector, Frank Carlson, and Ben Dobbs, and the United States is, as to the aforesaid defendants, estopped to prosecute said indictment, by [fol. 98] reason of the following matters and in the following particulars:

a) Upon all the grounds and particulars set forth in the Motion To Dismiss Indictment As To Defendant Schneiderman As Barred By Res Judicata, and the defendants incorporate by reference and make a part hereof as if fully set forth at length with respect to them and each of them, each and every allegation contained in the aforesaid motion and the exhibits submitted therewith.

b) The indictment herein alleges that the aforesaid de-

fendants and the defendant Schneiderman were in privity and mutually interested and connected with the same matters and offenses as were charged in the proceedings brought by the plaintiff herein against defendant Schneiderman, as alleged in the motion of defendant Schneiderman aforesaid, and by reason thereof the plaintiff, having once had its full day in court, ought not now to be given a second opportunity to relitigate the same matters and questions heretofore adversely decided against plaintiff, in this prosecution against the aforesaid defendants and defendant Schneiderman.

This motion is and will be based on Rule 12 of the Federal Rules of Criminal Procedure and all other applicable statutory and constitutional provisions, the exhibits heretofore incorporated by reference, the memorandum of points and authorities in support of Motion To Dismiss Indictment As To Defendant Schneiderman As Barred By Res Judicata, and upon all the records, files and proceedings heretofore had under this indictment and under the preceding indictments, *United States* v. *William Schneiderman, et al.*, No. 21883 CD, and *United States* v. *Frank Spector, et al.*, No. 21940 CD.

Leo Branton, Jr., attorney for defendants Henry [fol. 99] Steinberg, Ben Dobbs; Norman Leonard, attorney for defendants, Loretta Starvus Stack, Ernest Otto Fox, Frank Carlson; Ben Margolis, attorney for defendants, Oleta O'Connor Yates, Mary Bernadette Doyle; Alexander H. Schullman, attorney for defendants, Dorothy Rosenblum Healey, Philip Marshall Connelly; Leo A. Sullivan, attorney for defendants, Albert Jason Lima, Carl Rude Lambert; A. L. Wirin, attorney for defendants, Rose Chernin Kusnitz, Al Richmond, Frank Spector.

[fol. 100] [File endorsement omitted]

EXCERPTS FROM THE RECORD IN SCHNEIDERMAN V. UNITED STATES (320 U. S. 118), SUBMITTED IN CONNECTION WITH MOTION TO DISMISS BASED ON RES JUDICATA—Filed January 9, 1952

This document includes excerpts from the following from the record of the earlier *Schneiderman* case:

1. The pleadings
2. The trial
3. The opinion of the trial court
4. The findings of fact and conclusions of law
5. Points raised on appeal
6. The opinion of the Court of Appeals
7. The opinions, majority, and dissenting, of the Supreme Court

All for the purpose of showing the issues adjudicated in that case.

I

THE PLEADINGS

* Numbers refer to pages of the *Schneiderman* record, Exhibits A and B.

Complaint (T. R. 1-10)*

Preamble recites that the complaint is based upon Section 15 of the Act of June 29, 1906 (this Section authorized denaturalization in cases where citizenship was procured by illegality or fraud).

Answer

I and II	I and II
Alleges that on June 10, 1927 Schneiderman was admitted to citizenship and issued a certificate of naturalization, and that by virtue of the certificate of naturalization he claimed to be a citizen and entitled to the benefits of citizenship.	Admits.
III	III
The execution of an affidavit by one Charles, an attorney for the Immigration Service showing cause for for the institution of the proceedings. The affidavit is attached to the complaint and alleges that affiant is an attorney for the Immigration Service and has access to its records, "from which the following facts appear":	Denies.
1. That on 2/28/24 Schneiderman declared his intention to become a citizen and was naturalized on 6/10/27. [fol. 101]	
2. That Schneiderman stated under oath in his petition for naturalization that he was not a disbeliever in or opposed to organized government, that he was not a member of or affiliated with an organization teaching such doctrines, that he was attached to the prin-	

III

ciples of the Constitution, that his petition was verified by two persons who stated that he was of good moral character and attached to the principles of the Constitution; and that in open court he took an oath of allegiance to the United States.

3. That "in truth and *in fact* during the five years immediately preceding the filing of his said petition for naturalization, and from the date of said petition to the time of his admission to citizenship, the said William Schneiderman did not behave as a person attached to the principles of the Constitution of the United States, and he was not attached to such principles, but during said five-year period, and thereafter he was a member of an organization, to wit—The Workers (Communist) Party of America, *which organization* is opposed to the Government of the United States, and; *teaches and advocates the overthrow of the Government of the United States by force and violence;*" (T. R. 8)

4. That the naturalization was illegally and fraudulently procured.

IV

The decree and certificate were illegally procured in that:

Schneiderman was not at the time of his naturalization and for 5 preceding years had not behaved as a person attached to the principles of the Constitution, but "in truth and in fact during all of said times, respondent was a member of and affiliated with and believed in and supported the principles of certain organizations then known as the Workers (Communist) Party of America and the Young Workers (Communist) League of America, *whose principles were opposed to* the principles of the Constitution of the United States and *advised, advocated and taught the overthrow of the Government*, Constitution and laws *of the United States by force and violence*." (T. R. 3)

IV

Denies all of the allegations but admits that he was a member of the Communist Party of the United States of America.

[fol. 102] V

That "at all times *subsequent* to the entry of said decree of naturalization" he continued to be a member of and affiliated with the same organizations mentioned in paragraph IV and, in addition the *Communist Party of*

Denies the allegations except admits that he is now a member of the Communist Party of the United States of America.

V

the United States of America and the Young Communist League of the United States "*whose principles* are opposed to the principles of the Constitution of the United States and *advise, advocate and teach the overthrow of the Government*, Constitution and laws *of the United States by force and violence*, and during all of said times respondent has continued to believe in and support said principles of said organizations." (T. R. 4)

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The naturalization was procured by fraud in that he concealed from the naturalization court the fact that at the time of the filing of his petition and at the time of his naturalization and during the preceding 5 year period, he was and had been a member of and affiliated with the organizations previously named and that he "believed in and supported the principles of said organizations as aforesaid" and that this concealment not only deceived the court but was material in this: "That at all times herein mentioned *the principles of said organizations* were opposed to the principles of the Constitu-

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Denies the allegations and "in particular . . . denies that at any time during which [he] was a member of said organization that said organization, or the principles of said organization, or the tenets of said organization, or the teachings of said organization, or the belief of said organization, or either of them were opposed or contrary to the principles of the Constitution of the United States; and *specifically denies that either said respondent or said organizations advised or advises, advocated or advocates, taught or teaches the overthrow of the Government* or the Constitution or

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tion of the United States and *advised, advocated and taught the overthrow of the Government,* Constitution and laws *of the United States" by force and violence.* (T. R. 5)

[fol. 103]

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the laws, or the Government, Constitution and laws *of the United States by force and violence or force or violence."* (T. R. 11)

"And as and for a separate, further and distinct defense to said complaint, and the alleged cause of action therein purportedly stated, *respondent denies that at any time during which he was a member of said Communist Party of the United States of America, that said organization believed in, taught, or advocated the overthrow of the Government of the United States of America, its Constitution, or its laws; and specifically denies that during said time the said Communist Party of the United States advised, advocated, or taught the overthrow of the Government of the United States,* its Constitution and laws, or said Government, Constitution, or laws, *by force and violence, or force or violence, or by any other manner, or at all.*

"And in this connection, respondent alleges that respondent and the said Communist Party of the United States of America believes

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in, advocates, teaches, and is committed to uphold the achievements of democracy and the rights of and to, life, liberty, and the pursuit of happiness; and to defend the United States Constitution against all of its enemies.

"And as and for a further, separate and distinct defense to said complaint on file herein, respondent attaches hereto and makes a part hereof as though set out in haec verba, a copy of the Constitution of the Communist Party of the United States of America, which is marked Exhibit 'A,' and alleges that the aims, purposes and objects of said Constitution sets forth the aims, purposes, objects, beliefs, advocacies and teachings of said organization during all of the times alleged in said complaint on file herein." (T. R. 12-13)

The Constitution of the Communist Party of 1938 which is attached to the answer contains among others the following:

"Preamble. The Communist Party of the United States of America is a working class political party carrying forward today the traditions of Jefferson,

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Paine, Jackson and Lincoln, and of the Declaration of Independence; it upholds the achievements of democracy, the rights of 'life, liberty, and the pursuit of happiness,' and defends the United States Constitution against its reactionary enemies who would destroy democracy and all popular liberties; . . . by the establishment of Socialism, according to the scientific principles enunciated by the greatest teachers of mankind, Marx, Engels, Lenin and Stalin, embodied in the Communist International; . . . (T. R. 14-15)

[fol. 104]

"ARTICLE VI. Rights and Duties of Members, Section 1. The Communist Party of the U.S.A. upholds the democratic achievements of the American people. It opposes with all its power any clique, group, circle, faction or party which conspires or acts to subvert, undermine, weaken or overthrow any or all institutions of American democracy whereby the majority of the American people have obtained power to determine their own destiny in any degree. . . . (T. R. 18-19)

"ARTICLE X. Disciplinary Procedure . . . Section 5.

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Party members found to be advocates of terrorism and violence as a method of Party procedure . . . shall be summarily dismissed from positions of responsibility, expelled from the Party and exposed before the general public." (T. R. 20)

II

The Trial

The United States Attorney made an opening statement in which he summarized the foregoing pleadings and then said (T. R. 70) that the government expected to show that Schneiderman advocated principles "at variance with the principles of our government," that he was a member of societies that "teach doctrines at variance with our Constitution," that "he believed in the overthrow of our system of Government, whether by force or otherwise; and we believe we can establish that it was by force." (T. R. 71) He said that the Government was going to establish these facts by the activities of Schneiderman "both prior to the time of his admission *and subsequent* to his admission to citizenship . . . also by the *principles*, the *platforms*, *propaganda* of the organizations of which he was a member and an official, and to which he subscribed during all this period of time." (T. R. 71)

"During the course of a colloquy on the admission of evidence later, the United States Attorney stated that it was the Government's theory that when Schneiderman was naturalized he believed inter alia "in the overthrow of capitalistic government *by force and violence.*" (T. R. 151)

The Government introduced as Exhibit 4, the affidavit of the Immigration Service attorney, Charles (see above). (T. R. 81)

The Government introduced as Exhibit 5, the 1938 Constitution of the Communist Party (see above). (T. R. 84)

The Government called Schneiderman as a witness.

Schneiderman's testimony:

He was affiliated with the Young Workers League and held office in it (T. R. 86, 87, 91). He organized classes to study "the theory of Marxism"; the books (T. R. 180-181; Government Exhibits 20-25) used in those classes were "the generally accepted writings of Marx and Lenin" (T. R. 87-88); they included the "Communist Manifesto," "State & Revolution," and "Left-Wing Communism" (T. R. 89). The Young Workers League became the Young Communist League, affiliated with the Young Communist International. (T. R. 90).

[fol. 105] He joined the Workers Party, later the Communist Party of the United States of America. (T. R. 91). Since then he has been affiliated with it, has subscribed to its principles and held office in it. (T. R. 92-99)

The Party conducted study classes to "Teach the theories and practice of Marxism and Leninism" in which were used about the same books as were used in the Young Workers League classes (T. R. 94).

"Q. During all this period to which you have testified you were a member of the Young Workers' League, Young Workers' Party, Young Workers' Communist League, Young Communist League, Workers' Party, Workers' Communist Party and Communist Party of the United States of America, you subscribed to the principles of those parties during all of those years, didn't you?

"A. Yes, I did.

"Q. During all this period, you believed in and advocated the doctrine of the Socialistic principles promulgated by Marx and Lenin at that time?

"A. I believed in the essential correctness of the Marx theory as applied by the Communist Party of the United States.

"Q. Did you also subscribe to the philosophy and principles of Socialism as manifested in the writings of Lenin?

"A. Yes." (T. R. 102-103)

He agreed with the general political and theoretical conclusions of the 1928 program of the Communist International, insofar as it interprets general Marxist-Leninist theories.

The document is then introduced as Government Exhibit 6 and excerpts are read into the record (T. R. 109-122).

He approved the principles of the Communist Manifesto: "This Manifesto is the basis of tactics for Communism, under the Marxian theory. I believe that these general principles of Marxism, particularly as they apply to the period in which they were written and the country about which they were written, are entirely correct." (T. R. 123) He approved those principles when he was admitted to citizenship. (T. R. 123)

The Manifesto is received in evidence as Government Exhibit 7 and excerpts appear at pp. 124-127.

"State & Revolution" by Lenin is admitted as Government Exhibit 8. Excerpts appear at pp. 129 to 143.

"Left-Wing Communism" by Lenin is introduced in evidence as Government Exhibit 9, excerpts appearing at pp. 145 to 147.

"Program of the Young Communist International" is received in evidence as Government Exhibit 10 and excerpts appear at pp. 152 to 157.

Stalin's "Theory and Practice of Leninism" is marked for identification as Government Exhibit 11 (T. R. 160). No excerpts are read although later in the Supreme Court, Chief Justice Stone treats it as having been received in evidence and quotes from it in his dissenting opinion.

Government Exhibits 12 to 17 for identification are marked:

12: "National Convention of the Workers Party, 1925";
13: "Second Year of the Workers Party of America";
[fol. 106] 14: Acceptance speech of Foster and Gitlow at the 1928 Communist Party convention;
15: 1928 Communist Party election platform;
16: "ABC of Communism" by Bukharin;
17: The International of Youth.

These are lafer introduced through the witness Hynes (T. R. 238-272).

Olgin's "Why Communism" is received in evidence as Government Exhibit 18 and excerpts are quoted at pp. 166 to 174.

"New Frontiers for Pioneers of 1937" is marked Government Exhibit 19 for identification and later introduced through the witness Hynes (T. R. 273).

The government called Miles G. Humphreys as a former member of the Communist Party (T. R. 181-182) to testify that the party taught the overthrow of the government by force and violence (T. R. 198-200) and that the party used and circulated the books already identified as Exhibits 6, 7, 8, 9, 10, 11, supra (T. R. 206-218).

The government called William F. Hynes as a witness to identify Exhibits 12-17 and 19 and through him to offer them in evidence and to testify as a former party member and "expert" (T. R. 326 that the party's "method of bringing about a change in the form of Government is one of force and violence." (T. R. 330)

In response to a motion for a nonsuit, the government argued that its evidence shows that the Communist Party advocates force and violence and contemplates the use of force and violence. (T. R. 351)

The Defense

Schneiderman called as a witness.

He denies he advocated force and violence (T. R. 360-1).

He denies that the Communist Party advocated force and violence (T. R. 369, 373 et seq.).

The Defense introduced many exhibits (B-P, S, T and U) to meet the claim that the Communist Party advocates force and violence. (T. R. 401-474; 829-948)

Cross examination of Schneiderman by the government deals with the aims and objectives of the Communist Party (T. R. 861-2), its attitude toward the Government of the United States (T. R. 866), the method contemplated by it to establish socialism (T. R. 863-5), how the changes are proposed to be brought about (T. R. 867-8), what Lenin and Stalin taught about force and violence (T. R. 876, 879), and Schneiderman's own views on force and violence (T. R. 885).

The Defense offers the direct and cross examination of

two Stanford professors—one of philosophy (Harold C. Brown) and one of political science (Walter Thompson) to meet the contention that the doctrines of Marxism-Leninism means advocacy of force and violence. There is extensive direct and cross examination on this point. (T. R. 477-758) (Defendant's Exhibits Q and R)

III

The Opinion of the Trial Court

The trial court (33 F. Supp. 510) ruled that the methods contemplated by the Communist Party were shown to involve force and violence. The court based this conclusion [fol. 107] on an examination of Marxist literature covering almost a century, as well as on all the testimony of the witnesses heard.

The following quotation gives the essence of the ruling on this point:

> "The government has placed in evidence many volumes of books and pamphlets which explain the doctrines of Marx, Engels, Lenin and Stalin, upon which the principles and practices of the Communist Party and its predecessor organizations are based. It has also called upon three witnesses, including defendant, to explain the position of the Communist Party and these predecessor organizations with respect to communist ends and communist means. *The literature covers almost a century of economic and political thought, beginning with the publication of the Communist Manifesto in 1848.* All of this printed material, together with the testimony of the witnesses, may be examined for the purpose of shedding light on the period between 1922 and 1927, when defendant was on probation. In addition, the court may note defendant's conduct, as outlined above, in order to throw light on his state of mind during the probationary period.
>
> "The evidence before the court makes it clear that defendant's organizations sought to establish 'the dictatorship of the proletariat', as a primary goal in a vague and indefinite program looking toward the eventual creation of a classless society. The evidence

further discloses that *methods of force and violence* were, and are, accepted as necessary for the attainment of this 'dictatorship of the proletariat'. 'It would be difficult indeed to interpret (the many expressions set forth in the literature submitted in evidence) as indicating that the Communists expected to obtain their ends by peaceable means.' Kenmotsu v. Nagle, 9 Cir., 1930, 44 F. 2d 953, 955.

"The conclusion which this court reaches, after a careful reading of the writings placed in evidence and a review of the testimony of the several witnesses who appeared at the trial, is that the organizations to which defendant belonged were opposed to the principles of the Constitution and advised, taught and advocated the overthrow of the government by force and violence, and that defendant, by reason of his membership in such organizations and participation in their activities, was not 'attached to the principles of the Constitution of the United States, and well disposed to the good order and happiness of the same.' In re Saralieff, above. Therefore, defendant obtained his certificate of citizenship illegally." (33 F. Supp. at 512, 513)

IV

Finding number IV which corresponds to paragraph IV of the original complaint states that Schneiderman's naturalization was illegally procured because it was not true that he was not a disbeliever or opposed to organized government and the court finds further that:

". . . in truth and in fact during all of said times respondent had not behaved as a man attached to the principles of the Constitution of the United States and *well* disposed to the good order and happiness of the same, but was a member of and affiliated with and believed in and supported the principles of certain organizations known as the Workers Party of America, the Workers (Communist) Party of America, the Communist Party of the United States of America, the [fol. 108] Young Workers League of America, the Young Workers (Communist) League of America and

the Young Communist League of America, which organizations were, and each of them was, at all times herein mentioned, a section of the Third International the principles of all of which said organizations were opposed to the principles of the Constitution of the United States, and *advised, advocated and taught the overthrow of the Government, Constitution and laws of the United States by force and violence*, and taught disbelief in and opposition to organized government." (T. R. 49)

The court, in Finding number V, brings these findings down to the date of the trial, stating that respondent has been and now is a member of said organizations and has continued to believe in, advocate and support the said principles of said organizations. In Finding number VI, Schneiderman's failure to disclose these memberships to the Naturalization Court is found to be fraudulent on the grounds that the principles of said organizations were opposed to the Constitution of the United States and "advised, advocated and taught the overthrow of the government, constitution and laws of the U. S. by *force and violence* and taught disbelief in and opposition to organized government. In Finding number VII, the respondent's oath of allegiance is found to be false on the grounds that he intended "to adhere to and support and defend and advocate the principles and teachings of said Third International, which principles and teachings were opposed to the principles of the Constitution of the United States, and advised, advocated and taught the *overthrow of the government*, constitution and laws of the United States." (T. R. 50-51)

The court further finds in paragraph IX that "it is not true that respondent and the Communist Party of the United States of America believe in, advocate, teach or are committed to uphold the achievements of democracy or the rights of and to life, liberty and the pursuit of happiness or to defend the United States Constitution against all of its enemies." (T. R. 52)

The conclusion of law is that the certificate of naturalization was procured illegally and by fraud and should be set aside and cancelled.

V

Points on Appeal

The appeal raised, among others, the question of the insufficiency of the evidence to show that Schneiderman or any organization with which he was associated or of which he was a member believed in or advocated the overthrow of the Government of the United States by force and violence. (T. R. 901 (pt. 3))

It also asserted that Findings IV, VI, VII, and IX were not supported by the evidence. (T. R. 901)

These findings, summarized above, dealt with the issue of force and violence.

[fol. 109]

VI

The Opinion of the Court of Appeals

The opinion of the Court of Appeals, Ninth Circuit (119 F.2d 500) reviews the history of the case, summarizes the pleadings and trial court findings. The court finds it unnecessary to consider whether there was proof of fraud and narrows the question down to whether the findings of the trial court that naturalization was illegally procured are clearly erroneous.

The court holds the finding not clearly erroneous on two grounds: first, there is substantial evidence, which if believed, leads to the conclusion that the ultimate aims of the Communist Party (abolition of private property, dictatorship of proletariat, etc.) are "not those of our Constitution." (Page 504)

The second reason for reaching the same conclusion is the evidence regarding force and violence as to which the court says the following:

> "In bringing these aims about, we find sharply conflicting views as to what method the Communist Party advocates. There is substantial evidence that the Communist Party expects to use and advocates overthrow of our government *by force and violence*. There is other evicence to support the view that such party neither contemplates nor advocates the use of force and violence in the overthrow of our government. In

view of the direct conflict of evidence with respect to this question, we are unable to say that the finding of the trial court to the effect that the Communist Party advised, advocated and taught the overthrow of the Constitution and laws of the United States by force and violence was clearly erroneous." (119 F.2d, at 504)

VII

The Opinions of the Supreme Court

The Supreme Court's opinion (320 U.S. 118) reversed the courts below.

The government's claim is summarized at 320 U.S. 135:

> "The claim that petitioner was not in fact attached to the Constitution and well disposed to the good order and happiness of the United States at the time of his naturalization and for the previous five year period is twofold: First, that he believed in such sweeping changes in the Constitution that he simply could not be attached to it; Second, that *he believed in and advocated the overthrow by force and violence* of the Government, Constitution and laws of the United States."

The force and violence contention of the government is summarized by the court as follows: "The Government contends that petitioner was not attached because he believed in the use of force and violence instead of peaceful democratic means to achieve his desires. *In support of this phase of its argument the Government asserts that the organizations with which petitioner was actively affiliated advised, advocated and taught the overthrow of the Government, Constitution and laws of the United States by force and violence*, and that petitioner therefore believed in that method of governmental change." (Page 146)

The court notes that the record is barren of any conduct [fol. 110] or statement on petitioner's part indicating belief or advocacy of force and violence and that this conclusion can only be reached by finding that "*such was a principle of the organizations* to which he belonged and then impute that principle to him on the basis of his activity in those organizations and his statement that he subscribed to their principles." (Pages 146, 147)

Reviewing the government's evidence on this point the court notes as the documents published prior to 1927 which have been particularly stressed by the government: The Communist Manifesto, State and Revolution, Statutes of the Communist International, and Stalin's Theory and Practice of Leninism. Excerpts from these are quoted in the footnotes. (Pages 152 and footnotes 39 and 40)

The evidence was found insufficient to meet the standards of proof on two grounds: First, that the government's case is "subject to the many infirmities of proof by imputation," (Page 154) Which difficulties are "increased by the fact that there is, unfortunately, no absolutely accurate test of what a political party's principles are."

The Second weakness which the court criticizes is that the evidence as to the Communist Party's principles is "sharply conflicting" especially with regard to the crucial issue of force and violence. (Page 155). To show this conflict, the court quotes briefly from the Manifesto, from passages by Stalin and Lenin and from the Communist Party Constitution. (Pages 155, 157)

The court then states:

> "A tenable conclusion from the foregoing is that the Party in 1927 desired to achieve its purpose by peaceful and democratic means, and as a theoretical matter justified the use of force and violence only as a method of preventing an attempted forcible counter-overthrow once the Party had obtained control in a peaceful manner, or as a method of last resort to enforce the majority will if at some indefinite future time because of peculiar circumstances constitutional or peaceful channels were no longer open." (Page 157)

The dissenting opinion of Chief Justice Stone urges that the trial court's findings are abundantly supported by the evidence and should not be disturbed on appeal.

The dissenting opinion quotes much of the government's evidence and says:

> "There is abundant documentary evidence of the character already described to support the court's finding that the Communist Party organizations, of which petitioner was a member, diligently circulated printed mat-

ter which advocated the overthrow of the Government of the United States by force and violence, and that petitioner aided in that circulation and advocacy." (320 U.S., at 190)

In conclusion, Stone states: "On the record before us it would be difficult for a trial judge to conclude that petitioner was not well aware that he was a member of and aiding a Party which taught and advocated the overthrow of the Government of the United States by force and violence."

As an appendix to his opinion, Stone includes extensive excerpts from the statutes of the Communist International and from State and Revolution.

[fol. 111] Thus the dissenting opinion, as much as or even more than the majority opinion, makes it clear that the basic question which the government now proposes to adjudicate against Schneiderman is the same question of fact which was the principal question adjudicated in the denaturalization case.

[fol. 112] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

No. 22131—Criminal

UNITED STATES OF AMERICA, Plaintiff,

v.

WILLIAM SCHNEIDERMAN, et al., Defendants

ORDER ON MOTION TO DISMISS INDICTMENT—January 11, 1952

This cause having come before the court for hearing on motion of defendants filed January 3, 1952 to dismiss the indictment; and the motion having been argued and submitted for decision;

It is now ordered that defendants' motion to dismiss the indictment be and is hereby denied.

It is further ordered that the Clerk this day serve copies

of this order by United States mail on the attorneys for the parties appearing in this cause.

January 11, 1952.

Wm. C. Mathes, United States District Judge.

[fol. 113] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

No. 22131—Criminal

[Title omitted]

ORDER ON MOTION FOR BILL OF PARTICULARS—January 11, 1952

This cause having come before the court for hearing on motion of defendants filed January 4, 1952 for bill of particulars; and the motion having been argued and submitted for decision;

It is now ordered that defendants' motion for bill of particulars be and is hereby denied.

It is further ordered that the Clerk this day serve copies of this order by United States mail on the attorneys for the parties appearing in this cause.

January 11, 1952.

Wm. C. Mathes, United States District Judge.

[fols. 114-119] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

No. 22131 CD

[Title omitted]

STIPULATION—Filed January 11, 1952

It is hereby stipulated, consented and agreed by and between the attorneys for the respective parties that

I. The affidavit of Ben Margolis, Esquire, verified September 17, 1951, heretofore filed in the office of the Clerk of this Court in support of the motion to dismiss the indictments in *United States v. Schneiderman, et al*, No. 21883 CD, and *United States v. Spector, et al*, No. 21940 CD, shall be treated as if annexed to the motion to dismiss the indictment in the above entitled proceeding and considered by the Court as if fully therein set forth at length.

[fols. 120-166] ORDER

It is so ordered.

Dated: This 11th day of January, 1952.
Wm. C. Mathes, United States District Judge.

[fols. 167-387] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

No. 22131—Criminal

UNITED STATES OF AMERICA, Plaintiff,

v.

WILLIAM SCHNEIDERMAN, et al., Defendants.

ORDER ON MOTIONS TO DISMISS INDICTMENT AS BARRED BY RES JUDICATA—January 24, 1952

This cause having come before the court for hearing on motions of the defendants, filed January 7, 1952, to dis-

miss the indictment as barred by res judicata; and the motions having been argued and submitted for decision;

It Is Now Ordered that the motions of the defendants to dismiss the indictment as barred by res judicata be and are hereby denied.

It Is Further Ordered that the Clerk this day serve this order by United States mail on the attorneys for all the parties appearing in this cause.

Wm. C. Mathes, United States District Judge.

January 24, 1952.

[fol. 388] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

MOTION FOR JUDGMENT OF ACQUITTAL.—Filed June 2, 1952

To the United States of America, Plaintiff, and to Walter S. Binns, United States Attorney, Its Attorney:

Please Take Notice that the defendants William Schneiderman, Dorothy Healey Connelly, Albert Jason Lima, Oleta O'Connor Yates, Carl Rude Lambert, Philip Marshall Connelly, Rose Chernin Kusnitz, Al Richmond, Ernest Otto Fox, Henry Steinberg, Loretta Starvus Stack, Ben Dobbs, Frank Carlson and Frank Spector, jointly and individually, move the Court for judgment of acquittal pursuant to Rule 29 of the Federal Rules of Criminal Procedure upon the following grounds, among others:

1. The evidence herein, if held by the Court to be sufficient to sustain a conviction of the offense charged in the indictment herein, results in an unconstitutional application and construction of the Smith Act, 18 U. S. C. 2385, and the general conspiracy statute, 18 U. S. C. 371, in violation of the rights of these defend-
[fol. 389] ants under the Constitution of the United States as hereinafter more particularly set forth:

(a) The evidence discloses only the exercise by these defendants, and each of them, of their rights to freedom

of speech, freedom of press, freedom of assembly, and to petition the government for redress of grievances, guaranteed to them by the First Amendment.

(b) The evidence establishes no more than an assembly of persons for the purpose of expressing ideas and opinions at some remote, uncertain and indefinite time in the future, and a conviction based upon such evidence would result in a prior restraint on speech, press and assembly in violation of the First Amendment.

(c) The evidence fails to establish a clear and present danger of an evil which the government has a right to prohibit, or a danger whose gravity, discounted by its probability, justifies an invasion of the constitutional rights guaranteed to the defendants.

(d) The evidence consists of acts and statements, oral or written, of any alleged Communist made in any place at any time for the purpose of attaching criminality not to the acts of the individual defendants but to an entire political movement and, as such, raises questions so broad in scope as to make a fair trial within the limits of criminal procedure and jury trial impossible, all in violation of the due process clause of the Fifth Amendment and the provisions of the Sixth Amendment.

(e) The use by the prosecution of statements and incidents unlimited in time or place, without notice to the defendants as to the statements and incidents upon which the prosecution would rely, deprives the defendants of their rights under the Sixth Amendment to be informed of the nature and cause of the accusation and [fol. 390] to a fair opportunity to procure witnesses in their own defense and deprives them of their liberty without due process of law in violation of the due process clause of the Fifth Amendment.

(f) The attempt to found the prosecution's case as to the alleged nature of the Communist Party upon the unsworn writings and statements of persons not before the court for cross-examination deprives the defendants of their rights under the Sixth Amendment to be confronted with the witnesses against them.

(g) The evidence presents not a question of fact but a question of political philosophy which is not triable by a jury, and the power to pass judgment on political philosophy has not been conferred upon or delegated to the United States but is reserved by the First, Ninth and Tenth Amendments to the American people as a whole.

(h) The evidence presents only criticism of government, governmental policies and social and economic systems which the government is without power to punish without offending the guarantees of the First, Ninth and Tenth Amendments.

(i) The evidence purports to attach criminality to the Communist Party and the members and officers thereof and a conviction thereon would constitute the Smith Act a bill of attainder as construed and applied in violation of Article I, Section 9, Clause 3 of the Constitution.

2. The evidence is insufficient to sust in a conviction of the offense charged in the indictment in at least the following respects:

(a) The evidence is insufficient to establish that defendants, or any of them, had any personal intent to [fol. 391] cause the overthrow or destruction of the Government of the United States by force and violence.

(b) The evidence is insufficient to establish that the defendants, or any of them, had any personal intent to cause the overthrow or destruction of the Government of the United States by force and violence as speedily as circumstances would permit.

(c) The evidence is insufficient to establish that the defendants, or any of them, conspired to advocate or to teach the duty or necessity of overthrowing the Government of the United States by force and violence.

(d) The evidence is insufficient to establish that the defendants, or any of them, conspired to organize, or to help to organize, as the Communist Party of the United States of America a society, group or assembly of persons who teach or advocate the overthrow or destruction of the Government of the United States by force and violence.

(e) The evidence is insufficient to establish that the principles of Marxism-Leninism constitute the advocacy or the teaching of the duty or necessity of overthrowing or destroying the Government of the United States by force and violence.

(f) The evidence is insufficient to establish that the defendants, or any of them, understood or interpreted the principles of Marxism-Leninism as advocating or teaching the duty or necessity of overthrowing or destroying the Government of the United States by force and violence.

(g) The evidence is insufficient to establish that the defendants, or any of them, conspired to, or did, advocate or teach the duty or necessity of overthrowing [fol. 392] the Government of the United States by force and violence either by organizing or by helping to organize the Communist Party of the United States of America, or by advocating or teaching the principles of Marxism-Leninism, or by any other means whatsoever.

(h) The evidence is insufficient to establish that the defendants, or any of them, intended or intend to overthrow the Government of the United States by force and violence by advocacy thereof, or by any other means whatsoever (*Dennis v. United States*, 341 U. S. 491, 499-500, 516).

(i) The evidence is insufficient to establish that the nature of defendants' activities, or of any of them, was the advocacy or teaching of the duty or necessity of overthrowing the Government of the United States by force and violence, or the organizing or helping to organize, as the Communist Party of the United States of America a society, group and assembly of persons who teach and advocate the overthrow or destruction of the Government of the United States by force and violence (*Dennis v. United States*, 341 U. S. 491, 497-498, 502, 516).

(j) The evidence is insufficient to establish that the defendants, or any of them, had the "power to bring about the evil" (*Dennis v. United States*, 341 U. S. 491, 498, 516).

(k) The evidence is insufficient to establish that the defendants, or any of them, conspired to advocate or to teach the duty or necessity of overthrowing the Government of the United States by force and violence, or to organize or help to organize as the Communist Party of the United States of America a society, group or as- [fol. 393] sembly of persons who teach or advocate the overthrow or destruction of the Government of the United States by force and violence, with the intent that such teaching and advocacy be of a rule or principle of action and by language reasonably and ordinarily calculated to incite persons to such action (*Dennis v. United States*, 341 U. S. 491, 511-512).

(l) The evidence is insufficient to establish that the overt acts of the defendants, or of any of them, were in furtherance of the conspiracy alleged in the indictment or to effect the objectives thereof.

3. The evidence affirmatively establishes that the defendants, and each of them, have not committed the offense charged in the indictment in at least the following respects:

(a) The evidence affirmatively establishes that the Communist Party was organized long before 1940 and therefore no conspiracy to organize it could have existed during the period covered by the indictment.

(b) The evidence affirmatively establishes that the Communist Party, if re-organized at any time after 1940, was re-organized no later than 1945, and therefore no conspiracy to organize it or re-organize it could have existed within the three year period of the statute of limitations.

(c) The evidence affirmatively establishes that the principles of Marxism-Leninism do not constitute the advocacy or the teaching of the duty or necessity of overthrowing or destroying the Government of the United States by force and violence.

[fol. 394] (d) The evidence affirmatively establishes that none of the defendants conspired to advocate or teach the duty or necessity of overthrowing the Government of the United States by force and violence, or

to organize or help to organize, as the Communist Party of the United States of America a society, group, or assembly of persons who teach and advocate the overthrow or destruction of the Government of the United States by force and violence, with the intent of causing the overthrow or destruction of the Government of the United States by force and violence as speedily as circumstances would permit, nor advocated, taught, organized or helped to organize as aforesaid.

4. The evidence adduced by the prosecution was presented upon a theory based upon an erroneous construction of the Smith Act in the following respects:

(a) The evidence purports to establish that the Communist Party constitutes a conspiracy and that the charge under the indictment herein is established by showing the nature and character of the Communist Party and proving that the defendants are members thereof; such a construction of the general conspiracy statute, 18 U.S.C. 371, must be rejected in view of the fact that Congress has provided that membership in any organization which teaches or advocates the overthrow of the Government of the United States by force and violence, knowing the purposes thereof, is a separate and distinct substantive offense under the Smith Act, 18 U.S.C. 2385, a charge not made herein.

(b) Such aforesaid construction of the general conspiracy statute and of the Smith Act should be rejected [fol. 395] in view of the fact that Congress, after the adoption of the Smith Act and of the 1948 revision of the Criminal Code, has provided that neither the holding of office nor membership in any Communist organization shall constitute *per se* a violation of any criminal statute. 50 U.S.C. 783(f); Internal Security Act of 1950.

5. The charge contained in the indictment herein and the evidence adduced in support thereof are in fatal variance and a conviction of the defendants under the circumstances would deprive them of their rights under the Sixth Amendment to be informed prior to trial of the true nature and cause of the accusation and would

constitute a conviction under a charge not made in violation of the due process clause of the Fifth Amendment.

(a) The indictment charges a conspiracy by the defendants on or about June 28, 1940 to commit offenses against the United States prohibited by Section 2 of the Smith Act by organizing and helping to organize as the Communist Party of the United States of America a society, group and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence, while the evidence establishes that the Communist Party was either organized long before 1940 at some unidentified date or organized or re-organized in 1945.

(b) The indictment charges a conspiracy by the defendants on or about June 28, 1940 to commit offenses against the United States prohibited by Section 2 of the Smith Act by organizing and helping to organize as the Communist Party of the United States of America a society, group and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and [fol. 396] violence, while the evidence establishes that the defendants were in no way responsible for bringing the Communist Party into existence and refers solely to their alleged association with and activities as members and subordinate officers of the Communist Party.

(c) The indictment charges the defendants with conspiring to organize as the Communist Party a society, group and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence, while the evidence establishes that the existence, character and purposes of the Communist Party were independent of any act or agreement on the part of defendants as individuals, and guilt is being imputed to the defendants solely on the basis of their having allegedly elected to join the Communist Party, continue as members thereof and participate in its activities.

(d) The indictment charges an offense purportedly limited to the activities of these defendants within the period from June 28, 1940 to the date of the filing of the indictment, while the evidence covers an alleged conspiracy which is more than one hundred years old and entirely without ascertainable limits of either persons or places involved.

6. (a) The evidence establishes that the prosecution is barred by res judicata as to the defendant William Schneiderman, and that the United States is, as to the defendant William Schneiderman, estopped to prosecute the indictment herein.

(b) The evidence establishes that the prosecution is barred by res judicata as to the remaining defendants who the prosecution charges were in privity with the [fol. 397] defendant William Schneiderman, and that the United States is, as to the said remaining defendants, estopped to prosecute the indictment herein.

(1). The prosecution has failed to sustain its burden of proof that the principles of Marxism-Leninism, or of the Communist Party's interpretation thereof, has changed since it was decided by the Supreme Court in *Schneiderman v. United States*, 320 U.S. 118, that advocacy of Marxism-Leninism does not constitute advocacy of the overthrow or destruction of the government of the United States by force and violence.

(2) The evidence does not differ in essential quality or nature from the evidence which the Supreme Court decided in *Schneiderman v. United States*, 320 U.S. 118, was insufficient to establish advocacy of the overthrow and destruction of the government of the United States by force and violence on the part of any individual member of the Communist Party.

7. The evidence affirmatively establishes that the indictment was not found within three years next after the alleged offense was committed.

(a) The evidence affirmatively establishes that the Communist Party of the United States of America was

organized more than three years prior to the return of the indictment.

(b) The evidence fails to establish the commission of any overt acts on the part of the defendants, or any of them, in furtherance of the alleged conspiracy and to effect the objectives thereof within three years prior to the return of the indictment.

[fols. 398-407] This motion is and will be based on Rule 29 of the Federal Rules of Criminal Procedure and all other applicable statutory and constitutional provisions, the memorandum of points and authorities in support of this motion, and upon the transcript of evidence, records, files and proceedings heretofore had herein.

Respectfully submitted, Leo Branton, Jr., Attorney for Defendants Henry Steinberg, Ben Dobbs, Carl Rude Lambert. Norman Leonard, Attorney for Defendants Loretta Starvus Stack, Ernest Otto Fox, Frank Carlson. Ben Margolis, Attorney for Defendants Albert Jason Lima, Oleta O'Connor Yates. Alexander H. Schullman, Attorney for Defendants Dorothy Healey Connelly, Philip Marshall Connelly. A. L. Wirin, Attorney for Defendants Rose Chernin Kusnitz, Al Richmond, Frank Spector. William Schneiderman, In Pro Per.

[fols. 408-441] In United States District Court

No. 22,131 Criminal

[Title omitted]

Minutes of the Court—June 9, 1952

At Los Angeles, Calif.

Present: The Honorable Wm. C. Mathes, District Judge.
Deputy Clerk: P. D. Hooser.
Reporters: A. H. Bargion, S. J. Trainor.
U. S. Att'y: Walter S. Binns (absent).
U. S. Attorney, by Asst. U. S. Attorneys: N. W. Neukom, R. H. Kinnison.

Spec. Ass't to Att'y Gen'l, USA: Lawrence K. Bailey.

Counsel for Defendants: Ben Margolis for def'ts Oleta O'Connor Yates and Albert Jason Lima.

Alexander H. Schullman for def'ts Philip Marshall Connelly, and Dorothy Healey Connelly, charged as Dorothy Rosenblum Healey.

Leo Branton, Jr., for def'ts Henry Steinberg, Ben Dobbs, also known as Benjamin Isgur, and Carl Rude Lambert.

Norman Leonard for def'ts Loretto Starvus Stack, Ernest Otto Fox, also known as Ernest Otto Fuchs, and Frank Carlson, also known as Solomon Szkolnick.

A. L. Wirin (absent) for def'ts Al Richmond, also known as Abraham Richman, Rose Chernin Kusnitz, and Frank Efroim Spector.

Defendant William Schneiderman appearing in propria persona.

All fourteen defendants present. All sixteen jurors absent.

Proceedings: For further trial of all fourteen defendants, who are on bond.

At 11 A. M. court convenes herein, and all fourteen defendants being present, and all sixteen jurors absent, and counsel stipulating that all the defendants are present and all the jurors absent, Court orders trial proceed.

Attorney Leonard returns photostat copy of Def'ts Ex. IC which was withdrawn for purpose of photostating.

Attorney Branton argues in support of motion for judgment of acquittal.

At 11:45 A. M. Attorney Schullman argues.

Plaintiff's motion to reinstate certain stricken testimony is filed.

At 12:37 P. M. court recesses to 2 P. M. At 2:08 P. M. court reconvenes herein and all being present as before, including all fourteen defendant-, the jurors being absent, and counsel stipulating that all the defendants are present and the jurors absent, Court orders trial proceed.

Attorney Margolis argues in support of motion for judgment of acquittal.

At 3 P. M. Attorney Neukom argues in opposition to motion.

Court orders motions submitted.

At 3:08 P. M. court recesses. At 3:28 P. M. court reconvenes herein, and all being present as before, including all fourteen defendants, the jurors being absent, and counsel stipulating that all the defendants are present, and the jurors absent, Court orders trial proceed.

Attorney Kinnison argues in support of Gov't's motion to reinstate certain stricken testimony. Court denies paragraph 1, 2, 3, and 5 and grants paragraph 4.

Motions for judgment of acquittal as to all defendants are denied.

Attorney Margolis moves for a mistrial and said motion is denied by the Court.

Order striking evidence is signed and filed.

Court orders further trial continued to 11 A. M., June 10, 1952.

Edmund L. Smith, Clerk, by P. D. Hooser, Deputy Clerk.

[fol. 442] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

No. 22131

[Title omitted]

ORDER STRIKING EVIDENCE—Filed June 9, 1952

The defendants by their counsel having moved the Court for an order striking certain evidence from the record, and the Court having heard respective counsel in support and opposition to the aforesaid motion to strike, and being fully advised in the premises,

It is hereby ordered that the motion to strike certain evidence be, and the same is hereby, granted, and the evidence included in the following portions of the record is stricken:

1. Page 438, lines 12 through 20;
2. Page 567, lines 7 through 11;
3. Page 568, line 17 through page 570, line 23;
4. Page 596, line 15 through page 600, line 4;
5. Page 645, line 8 through page 646, line 16;

6. Page 648, line 12 through page 649, line 15;
7. Page 654, line 11 through page 658, line 25;
8. Page 672, line 6 through page 673, line 2;
9. Page 673, lines 3 through 20;
[fol. 443] 10. Page 673, line 21 through page 675, line 10;
11. Page 704, line 19 through page 708, line 23;
12. Page 1231, lines 14 through 18;
13. Page 1242, lines 21 through 23;
14. Page 1318, line 23 through page 1319, line 2;
15. Page 1321, line 23 through page 1325, line 24;
16. Page 1551, lines 11 through 13;
17. Page 1574, line 6 through page 1577, line 13;
18. Page 1997, lines 1 through 13;
19. Page 2007, line 15 through page 2008, line 25;
20. Page 2013, line 17 through page 2014, line 4;
21. Page 2084, line 24 through page 2088, line 12;
22. Page 2092, line 20 through page 2093, line 10;
23. Page 2141, line 4 (following the word "yes") through line 8;
24. Page 2141, line 8 beginning with the word "And" through page 2145, line 16;
25. Page 2204, line 20 through page 2207, line 1;
26. Page 2209, line 8 through page 2211, line 15;
27. Page 2224, lines 4 and 5;
28. Page 2240, line 14 through page 2244, line 1;
29. Page 2247, line 23 through page 2248, line 23;
30. Page 2267, line 17 through page 2269, line 12;
31. Page 2301, line 8 through page 2303, line 20;
33. Page 2395, line 23 through page 2399, line 3;
34. Page 2399, line 19, the words "in that basement";
35. Page 2697, line 1 (following the word "yes") through page 2698, line 13;
36. Page 2821, line 20 through page 2822, line 4;
37. Page 3237, line 22 through page 3242, line 2;
38. Page 3321, line 19 through page 3322, line 21;
39. Page 3581, line 10 through page 3584, line 1;
40. Page 3596, line 21, the words "and the signature";
41. Page 3597, line 8, the name "Wm. Schneiderman";
[fol. 444] 42. Page 3773, lines 5 through 9, beginning with "In";
43. Page 3889, line 16 through page 3890, line 3;

44. Page 3913, lines 17 through 21;
45. Page 3961, line 19 through page 3966, line 4;
46. Page 4447, lines 6 through 12;
47. Page 4476, line 5 through page 4477, line 17;
48. Page 4490, line 11 through page 4495, line 6;
49. Page 4923, line 7 through page 4924, line 13;
50. Page 4939, line 24 through page 4940, line 12; beginning with the word "Jack";
51. Page 5029, line 19 through page 5030, line 22;
52. Page 5032, lines 1 through 8;
53. Page 5128, lines 7 and 8, the words "was discussed, and it was decided that blood would flow; there could be no peaceful change.";
54. Page 5367, line 1 through page 5372, line 3;
55. Page 5374, line 1 through page 5376, line 8;
56. Page 5381, line 18 through page 5382, line 13;
57. Page 5384, line 24 through page 5385, line 5;
58. Page 5431, line 15, the words "I had to burn it."
59. Page 5446, lines 12 and 13, the words "because they all came carrying the Chronicle and laughing about his death."
60. Page 5456, line 22 through page 5457, line 1;
61. Page 5463, line 8 through page 5464, line 11;
62. Page 5474, line 19 through page 5476, line 24;
63. Page 5502, line 3;
64. Page 5504, line 19 through page 5505, line 10;
65. Page 5506, line 2 through page 508, line 15;
66. Page 5512, line 25 through page 5513, line 2;
67. Page 5513, line 3 through page 5516, line 21, as to all defendants except Carlson;
68. Page 5529, lines 12 through 20;
[fol. 445] 69. Page 5530, lines 2 through 7;
70. Page 5549, line 6 through page 5553, line 20;
71. Page 5560, line 14 through page 5564, line 22;
72. Page 591, line 23 through page 5592, line 2;
73. Page 5598, line 5 through page 5599, line 6;
74. Page 6444, line 8 through page 6448, line 23;
75. Page 6458, line 2 through page 6461, line 16;
76. Page 6461, line 23 through page 6463, line 9;
77. Page 6481, lines 6 through 13;
78. Page 6481, line 14 through page 6482, line 11;

79. Page 6487, lines 20 through 23;
80. Page 6488, line 21 through page 6489, line 19;
81. Page 6697, line 2 through page 6698, line 4;
82. Page 6832, lines 9 through 17;
83. Page 7512, line 21 through page 7513, line 11;
84. Page 7621, lines 15 through 17;
85. Page 7685, line 18 through page 7687, line 4;
86. Page 7688, lines 8 through 21;
87. Page 7699, lines 3 through 5;
88. Page 7723, line 10 through page 7724, line 19;
89. Page 7802, line 9, beginning with the word "I";
90. Page 7802, lines 11 through 14;
91. Page 7815, lines 4 through 8;
92. Page 7819, lines 13 through 23;
93. Page 7820, lines 3 and 4, the words "and she had had a great privilege by talking with Molotov.";
94. Government Exhibit No. 62;
95. The signature only from Government Exhibit No. 193;
96. Government Exhibit No. 325;
97. The signature only from Government Exhibit No. 351;
98. Government Exhibit No. 657;
99. Government Exhibit No. 664;
[fol. 446-507] 100. Government Exhibit No. 666;
101. Government Exhibit No. 684;
102. Government Exhibit No. 688;
103. Government Exhibit No. 703;
104. Government Exhibit No. 717;
105. Government Exhibit No. 719;
106. Government Exhibit No. 720.

All other pending motions of the defendants to strike from the evidence are hereby denied.

Wm. C. Mathes, United States District Judge.

Received copy of the within Order this 9th day of June, 1952 and approved as to form.

Walter S. Binns, United States Attorney, by Roy H. Kinnisen, Attorney for Plaintiff.

[fol. 508] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

No. 22131 CD

AFFIDAVIT OF WILLIAM SCHNEIDERMAN IN SUPPORT OF MOTION FOR MISTRIAL AS MADE ON JUNE 9, 1952 (REP. TR. VOL. 74, P. 9993, L. 18-25, INCL. AND P. 9994, L. 1-12, INCL.—Filed June 19, 1952

STATE OF CALIFORNIA,
County of Los Angeles, ss.

William Schneiderman, being duly sworn according to law, deposes and says:

1. That he is one of the Defendants in the above entitled action;

2. That on June 9, 1952, after all the Motions for Judgments of Acquittal had been submitted, the Honorable William C. Mathes, Judge presiding, in denying said Motions, made the statement, as appearing in Reporter's Transcript of Proceedings, June 9, 1952, Volume 74, commencing at page 9986, line 10, to and including page 9988, line 24, as follows:

> "The Court: On the motions for judgment of acquittal, I might say preliminarily that because of the cases I cited to counsel a few days ago, I don't give the effect to the presumption of innocence which counsel for the [fol. 509] defense would seem to urge the court to give with respect to every bit of evidence. As I understand the presumption of innocence, it means that the defendant is presumed innocent of any crime. He starts a trial on a charge with a clean slate and there is no evidence against him with respect to that charge except what is offered in court and it becomes the evidence in the case.
>
> "Rule 29-A directs the court to direct the entry of judgment of acquittal if the evidence is insufficient to sustain a conviction. Application of the rule at the

present stage of this case presupposes the jury has returned a verdict of guilty based on the evidence thus far adduced, which is the prosecution's case in chief, and requires the trial judge to review this evidence and determine whether a jury might reasonably base a finding of guilty thereon. This determination necessarily involves three steps.

"First, a finding of every fact which the jury might reasonably find from the evidence in support of such a verdict.

"Second, finding every fact which the jury might reasonably infer from all facts which the jury might reasonably find from the evidence to have been proved.

"In other words, to the facts which the jury might reasonably find to have been proved, we must add all inferences which the jury might reasonably draw from facts which have been proved, to support that verdict.

"Finally, this determination involves consideration of whether all facts favoring conviction as shown by the evidence, plus all facts which reason permits to be inferred therefrom are sufficient to enable the jury to find guilt to a moral certainty of the charge, which is [fol. 510] guilt beyond a reasonable doubt.

"I don't think it would be proper for me at this time to comment upon the evidence further than to say that while membership and the holding of office in the Communist Party are declared by Congress not to be criminal per se, that means, of course, in and of itself, it seems *to* fair to say that the evidence here permits the reasonable inference, first, that the ultimate goal of the Communist Party is socialism and that the Communist Party is an organization which advocates the duty and necessity of the overthrow of the government of the United States by force and violence in order to achieve that ultimate goal, and permits the further inference in the bound of reason that the party intends to accomplish that result as speedily as circumstances permit.

"The evidence here also permits a reasonable inference that a majority of the members of the party or, probably more accurately, at least, the dominant mem-

bers of the party, embrace and support that objective and that method of achieving the objective.

"The evidence here in this case permits the reasonable inference that these defendants are members of the Communist Party of the United States of varying degrees of standing and activity.

"From that fact, it would be reasonable to infer under all the circumstances the jury might reasonably infer that the defendants embrace the doctrine and subscribe to the view that advocates the duty and necessity of overthrowing the government of the United States by force and violence as speedily as circumstances permit.

"From their membership in the Communist Party and the activities shown, the jury might infer at the [fol. 511] outside such concert of action as is described as a conspiracy, the conspiracy specifically which is charged in the indictment.

"For those reasons, briefly, the motions as to all defendants for judgment of acquittal will be denied.

"Of course, pursuant to the rule, the motions may be renewed by any defendant upon the close of all the evidence in the case."

3. That during the proceedings in the above entitled matter on June 9, 1952, in said Volume 74 of the Reporter's Transcript, at page 9993, commencing with line 18, to and including page 9994, line 12, in behalf of all of the Defendants, a Motion for Mistrial was made, which Motion in said Transcript appears as follows:

"Mr. Margolis: I also move for a mistrial upon the grounds that under the conditions prevailing in this period of time, where because of the degree of feeling that there is utilized by the press, such a large section of the press, for the purpose of stirring up hatred against persons who are members of the *Community* Party, that remarks of your Honor indicating that there might be sufficient evidence is tantamount to a jury, under the present conditions, to an invitation to convict, I am not talking about your Honor's convictions; I am talking about the effect.

"The Court: Do you wish the remarks I have made stricken?

"Mr. Margolis: It would not accomplish anything, your Honor.

"The Court: They won't be a matter of public record. They won't be printed if they are stricken.

"Mr. Margolis: The press can still report them, [fol. 512] that they were made, although they were stricken. Therefor- I see no useful purpose to be offered by striking them. I submit the irreparable damage has been committed.

"The Court: The motion will be denied, Mr. Margolis."

4. That affiant, on June 10, 1952, read the Los Angeles Examiner of June 10, 1952, Section Three, Page 1, under the caption, "14 Reds Lose Acquittal Plea", a true and correct copy of said article is attached hereto, made part hereof and marked Exhibit "A".

5. That on June 10, 1952, affiant read The Mirror of June 10, 1952, at Page 23, under the caption, "14 Cal. Communists' Defense Opens Today in Federal Court", a true and correct copy of said article is attached hereto, made part hereof and marked Exhibit "B".

6. That on June 10, 1952, affiant read the Los Angeles Herald & Express of June 10, 1952, Page A-14, under the caption, "Defense Set for Reply", a true and correct copy of said article is attached hereto, made part hereof and marked Exhibit "C".

7. That on June 10, 1952, affiant read the Los Angeles Times of June 10, 1952, Part I, Page 23, under the caption, "Acquittal Pleas Denied in Trial of Red Leaders", a true and correct copy of said article is attached hereto, made part hereof and marked Exhibit "D".

8. That on June 10, 1952, affiant read the Daily News of June 10, 1952, at Page 4, under the caption, "14 to Begin Defense in Red Trial", a true and correct copy of said article is attached hereto, made part hereof and marked Exhibit "E".

William Schneiderman.

Subscribed and sworn to before me this 18th day of June, 1952.

Mary L. Rosenfield, Notary Public in and for said County and State.

My Commission Expires Jan. 15, 1955.

[fol. 513] EXHIBIT "A"

Los Angeles Examiner

Los Angeles,
Tuesday, June 10, 1952.

14 Reds Lose Acquittal Plea

Court's Ruling Clears Way for Defense Testimony

Motions for directed verdicts acquitting William Schneiderman and 13 other California Communist leaders were denied by Judge William C. Mathes in Federal Court late yesterday.

Action opened the way for commencement of the defense today, with opening statements by Attorneys Alex H. Schullman and Norman Leonard the first move.

In denying the motions Judge Mathes rejected defense contention that the Government had failed to prove Smith Act charges that the 14 conspired to teach violent revolution.

Evidence

The court noted that membership in the Communist Party or holding a party office is no crime, but observed that:

"The evidence here has been that the ultimate goal of the Communist Party is Socialism and the inference has been that the party teaches the necessity of achieving that goal as speedily as possible."

Judge Mathes added that evidence had been offered that the party advocated violent action if necessary, and said that:

"The case involves dominant members of the Communist Party. . . . It is reasonable to assume from the evi-

dence that they embraced the doctrine of the duty and necessity of overthrowing the Government by force and violence. . . ."

Unusual Request

Attorney Schullman then made an extraordinary request that the press refrain from reference to the comments of the court lest they influence the jury.

Judge Mathes pointed out, however, that jurors are admonished to refrain from discussing a case on trial or reading anything about it.

Attorney Ben Margolis, also of the five-man defense counsel, renewed a previous motion for mistrial on general grounds, which was again denied.

[fol. 514] EXHIBIT "B"

The Mirror

Los, Angeles,
Tues., June 10, 1952.

14 Cal. Communists' Defense
Opens Today in Federal Court

A motion of acquittal denied them, 14 California Communist leaders return to Federal court today to begin presentation of their own defense.

Judge William C. Mathes yesterday climaxed nearly three weeks of legal arguments by denying motions for judgment of acquittal for all defendants.

In making his ruling, the judge held that while membership or office-holding in the Communist Party is not criminal per se, "it is fair to say that evidence here permits a reasonable inference that the ultimate goal is Socialism."

Advocate Force

Further, he said, the Communist Party, as organized, "advocates overthrow of the government by force and violence and as speedily as circumstances permit," which is the essence of the Smith Act indictment against the 14.

The evidence here permits a reasonable inference that the defendants are members of the Communist Party in

good standing," the judge went on, "and it is reasonable to infer the defendants embraced the doctrines of the Communist Party."

Atty. Ben Margolis objected to the judge's explanation of his ruling on grounds it might reach the eyes of the jurors, who had been excused since May 22.

"They're not supposed to read the newspapers," the judge replied. He offered to have his remarks stricken.

Whereupon, Margolis asked for a mistrial on grounds the judge's explanation might influence the jury's decision. It was denied.

Today, Attys. Alexander H. Schullman and Norman Leonard will make their opening remarks to the jurors in behalf of their respective defendants. They had waived opening statements until completion of the government's case.

Schullman represents Dorothy Healey, Los Angeles County chairman, and Philip M. Connelly, Los Angeles editor of the People's World. Leonard represents Loretta Starvus Stack, Ernest Otto Fox, both of San Francisco, and Ben Dobbs of Los Angeles.

Other defendants are William Schneiderman, State chairman; Henry Steinberg, Carl R. Lambert, Frank Carlson, Al Richmond, Rose Chernin Kusnitz, Frank Spector, Albert J. (Mickie) Lima and Oleta O'Connor Yates.

Initial defense testimony will come tomorrow, and court then will recess until Monday because Judge Mathes must attend a judicial conference.

U.S. Atty. Walter S. Binns also is absent, attending a conference of United States Attorneys in Washington, while Atty. A. L. Wirin also is in the East on legal affairs.

[fol. 515] EXHIBIT "C"

Los Angeles Herald & Express

Tuesday, June 10, 1952.

L. A. Red Trial

Defense Set for Reply

Attorneys for 14 California Communist leaders today started marshaling their witnesses as the aftermath of the refusal of Federal Judge William C. Mathes to direct verdicts of acquittal in behalf of any of the defendants.

The judge's ruling came after several days of involved legal arguments which came to a close yesterday afternoon.

In effect, the judge's ruling held that sufficient evidence had been presented by the government's 16 weeks of trial to assure continuance of the trial to let the jury decide as to the guilt or innocence.

"From the government's evidence and in the absence of defense evidence, the jury reasonably could draw the inference that the ultimate goal of the Communist Party is socialism," the judge said, "and that the Communist Party advocates the duty and necessity to overthrow the government by force and violence to achieve this goal as speedily as circumstances permit.

"The jury could reasonably draw the inference that the defendants are members of the party and embrace this doctrine in the light of the government's case to date."

[fol. 516] EXHIBIT "D"

Los Angeles Times

Tuesday, June 10, 1952.

Part I

Acquittal Pleas Denied in Trial of Red Leaders

Defense Attorneys to Open Arguments, but Their Strategy Plan Remains Undisclosed

U.S. Judge William C. Mathes yesterday denied defense motions for a directed verdict of acquittal in the trial of

14 California Communist Party leaders on charges of conspiracy to teach and advocate the violent overthrow of the U.S. Government.

Following written orders on further motions to strike certain parts of the testimony of the 22 government witnesses who testified for the prosecution, Defense Attys. Norman Leonard and Alexander Schullman will make their opening statements and the defense is scheduled to begin presenting witnesses.

None of the five defense attorneys would indicate in advance just what their strategy will be or what witnesses will be presented.

In denying motions for directed verdicts of acquittal, Judge Mathes said the government had presented sufficient evidence to indicate up to the present time that the ultimate goal of the Communist Party was Socialism and that it could be inferred that the Communist Party advocated the violent overthrow of the United States government to achieve that end.

He also said that the evidence links the defendants, as dominant members of the Communist Party here, and indicates that they supported that inference.

[fols. 517-573] EXHIBIT "E"

Daily News

Los Angeles,
Tuesday, June 10, 1952.

14 to Begin Defense in Red Trial

Fourteen accused Communists today were to begin presentation of their defense to charges of conspiracy after Federal Judge William C. Mathes refused to grant motions for directed verdicts of acquittal.

The case for the defense was to open with statements by attorneys Alexander Schullman and Norman Leonard on behalf of the 14 defendants who are charged with conspiring to teach and advocate the necessity for forceful overthrow of the government.

The last two weeks have been taken up in involved legal

argument over testimony presented by the government, and over defense motions for directed verdicts of acquittal.

Judge Mathes will instruct the jury, when it returns to court today, on what sections of testimony must be ignored, having been stricken from the record of the 19 weeks of proceedings.

In explaining why he refused to grant the motions for acquittal Judge Mathes created a minor furor among defense counsel with his remarks.

Judge Mathes said, "While membership in the Communist party, as declared by Congress, is not a criminal offense per se, there is reasonable inference from the evidence presented by the government from which the jury might conclude that the goal of the Communist party is socialism and there is also reasonable inference that the Communist party has the goal and purpose of bringing this about by overthrowing the government by force and violence as speedily as circumstances permit."

The judge pointed out that the jury might arrive at this conclusion from the government's case alone and in the absence of any contrary testimony from the defendants.

Schullman, admitting he did not know how to phrase his request, finally asked that the newspapers not publish the court's remarks because the jurors might read them and conclude that the judge had implied he believed the defendants guilty, even though the trial was not over.

Judge Mathes asked whether the attorney wanted the court's remarks stricken from the record. Schullman said he did not.

Judge Mathes said jurors are not supposed to read newspaper reports of the case and added "that while an inference might be drawn by the jurors as to the guilt of the defendants from the evidence thus far, they could likewise make an inference from the same evidence that the defendants were not guilty."

Attorney Ben Margolis' motion for a mistrial on the grounds that the court's remarks would prejudice the jury was denied.

[fols. 574-580] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

No. 22131-CD Crim.

ORDER TO REINSTATE CERTAIN STRICKEN TESTIMONY—Filed July 9, 1952

Plaintiff, through its counsel, having moved the Court for an order reinstating certain evidence heretofore stricken from the record, and the Court having heard respective counsel in support and in opposition to the aforesaid motion, and being fully advised in the premises;

It is hereby ordered that the motion to reinstate the testimony of the Witness John Lautner in Volume 18, page 2334, line 14, to page 2335, line 5, of the Transcript be and the same is hereby granted and the evidence there included is reinstated in the record.

It is further ordered that in all other respects said motion be and the same is hereby denied.

Dated this 9th day of July, 1952.

Wm. C. Mathes, United States District Judge.

RHK:aa Approved as to form. Norman Leonard.

[fol. 581] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

[Title omitted]

No. 22131 CD

ORDER STRIKING EVIDENCE—Filed July 22, 1952

The defendants by their counsel having moved the Court for an order striking certain evidence from the record, and the Court having heard respective counsel in support and

opposition to the aforesaid motion to strike, and being fully advised in the premises,

It is hereby ordered that the motion to strike certain evidence be, and the same is hereby, granted, and the evidence included in the following portions of the record is stricken:

107. Page 1164, line 1 through page 1170, line 25;
108. Page 1996, lines 14 through 19;
109. Page 2319, line 7 through page 2320, line 23;
110. Page 3250, line 23 through page 3251, line 11;
111. Page 3252, line 23 through page 3253, line 8;
112. Page 3580, line 7: The words "William Schneiderman".
113. Page 3580, line 9 through page 3581, line 3;
114. Page 3612, line 22: The words "Henry Winston".
[fol. 582] 115. Page 4000, line 13 through page 4003, line 7;
116. Page 4004, line 7 through page 4006, line 17;
117. Page 4221, line 24 through page 4225, line 23;
118. Page 4648, line 8 through page 4649, line 9;
119.
120. Page 4920, line 19 through page 4923, line 6;
121. Page 4927, line 9 through page 4929, line 11;
122. Page 4938, lines 8 through 9: The words, "The original had to be turned in to the party when we received the 1948 cards, and";
123. Page 4959, line 16, beginning with the words "And finally" to line 23, ending with the word "quote";
124. Page 4971, lines 20 through 21: The words "but it would be best to destroy.";
125. Page 5081, line 18 through page 5085, line 3;
126. Page 5108, lines 9 through 10;
127. Page 5111, lines 14 through 18;
128. Page 5601, line 1 through page 5602, line 18, as to all defendants, except the defendant Ben Dobbs;
129. Page 5760, lines 13 through 18;
130. Page 5786, line 11 through page 5787, line 9;
131. Page 5787, line 10 through page 5790, line 25;
132. Page 6616, line 1 through page 6619, line 1;
133. Page 7460, line 24 through page 7461, line 4;
134. Page 7462, lines 8 through 14;
135. Page 7463, lines 16 through 19;
136. Page 7465, lines 21 through 24;

137. Page 702, line 16 through page 704, line 18;

138. Page 971, line 14;

139. Page 981, lines 8 through 9: The words "It may have been the Soviet Union constitution.";

[fol. 583] 140. Page 1237, line 24 through page 1238, line 14;

141. Page 2004, line 15, beginning with the word "which" to line 19, ending with "L-o-z-o-f-s-k-y.";

142. Page 2342, lines 23 through 25;

143. Page 3906, line 22 through page 3925, line 14;

144. Page 3927, line 19 through page 3933, line 16;

145. Page 3934, line 4 through page 3935, line 11;

146. Page 3936, line 15 through page 3937, line 20;

147. Page 4477, line 18 through page 4478, line 23;

148. Page 4482, lines 10 through 15;

149. Page 5071, lines 8 through 9: The words "since they advocated the violent overthrow of the government.";

150. Page 5349, lines 7 through 8;

151. Page 5499, lines 2 through 14;

152. Page 5554, lines 18 through 24;

153. Page 5584, line 25 through page 5585, line 18;

154. Page 5794, lines 5 through 19;

155. Page 6008, lines 3 through 6: The words "but I was part and parcel of a plot to prepare a revolution, and that everything I did and that the leading class did from day to day was part of the plot of pushing forward to this revolution.";

156. Page 6030, lines 12 through 14: The words "because they haven't told you the whole story. The Communist Party won't talk.";

157. Page 6035, lines 4 through 14;

158. Page 6110, lines 15 through 21;

159. Page 6116, line 3, beginning with the words: "We had" to line 7, ending with the word "one";

160. Page 6314, lines 2 through 20;

161. Page 6440, lines 2 through 3;

162. Page 7604, line 4 through page 7606, line 24;

[fols. 584-629] 163. Page 7806, lines 11 through 12: The words "And she said, 'Well, they don't make books and put paper into them like this in America.' ";

164. Page 7928, lines 24 through 25: The words "Well, he was practicing law for the Communist Party.";

165. Page 7998, line 17: The words "The native sons stayed later.";

166. Page 8063, lines 23 through 25;

167. Page 8404, line 1, beginning with the word "who" to line 4, ending with the words "New York";

168. Page 12,080, line 11 through page 12,081, line 9;

169. Government Exhibit #485, as to all defendants except the defendant Ben Dobbs;

170. Government Exhibit # 305;

171. Government Exhibit # 404.

Done in Open Court July 15, 1952.

Wm. C. Mathes, United States District Judge.

Received copy of the within Order this — day of July, 1952 and approved as to form.

Walter S. Binns, United States Attorney. By Ray H. Kinnison, Attorney for Plaintiff.

[fol. 630] IN UNITED STATES DISTRICT COURT

[Title omitted]

No. 22,131 Criminal

MINUTES OF THE COURT—July 30, 1952

At Los Angeles, Calif.

Present: Hon. Wm. C. Mathes, District Judge;

Deputy Clerk: P. D. Hooser. Reporters: S. J. Trainor, A. H. Bargion;

U. S. Att'y: Walter S. Binns;

U. S. Attorney, by Ass't U. S. Att'ys: N. W. Neukom, R. H. Kinnison;

Spec. Ass't to Att'y Gen'l USA: Lawrence K. Bailey;

Counsel for Defendants: Ben Margolis for deft's Oleta O'Connor Yates and Albert Jason Lima;

Alexander H. Schullman for def'ts Philip Marshall Connelly and Dorothy Healey Connelly; charged as Dorothy Rosenblum Healey;

Leo Branton, Jr., for def'ts Henry Steinberg, Ben Dobbs, also known as Benjamin Isgur, and Carl Rude Lambert;

Norman Leonard for def'ts Loretta Starvus Stack, Ernest Otto Fox, also known as Ernest Otto Fuchs, and Frank Carlson, also known as Solomon Szkolnick;

A. L. Wirin for def'ts Al. Richmond, also known as Abraham Richman, Rose Chernin Kusnitz, and Frank Efroim Spector;

Defendant William Schneiderman appearing in propria persona.

All fourteen defendants present. All sixteen jurors present at 11:30 AM.

Proceedings: For further jury trial of all fourteen defendants, who are on bond, except Def't Yates, who is in custody.

Court convenes herein at 11 AM, all fourteen defendants present, all sixteen jurors absent, and counsel so stipulating,

Defendant Schneiderman moves for a mistrial and makes a statement relative thereto. Defts' Ex. NE is marked for ident. Attorney Schullman joins in said motion. Defts' Ex. NE, first 20 pages of Los Angeles Times for July 30, 1952, is received into evidence.

Attorney Leonard moves that proceedings be suspended until written motions can be filed by defendants and ruled upon.

Each of Attorneys Margolis, Binns, Wirin, and Schullman, respectively, makes a statement.

Motion to suspend is denied. The jury is summoned.

At 11:30 AM the jury is brought into court and Attorney Neukom resumes argument, it being stipulated that the jury is present.

At 12:23 PM Court admonishes the jurors not to discuss this cause and declares a recess to 1:45 PM.

At 2:05 PM court reconvenes herein and all being present as before, including all fourteen defendants and all sixteen jurors, and counsel stipulating that all the defendants and jurors are present, Court orders trial proceed.

Attorney Neukom resumes argument.

At 3:05 PM Court admonishes the jurors and declares a recess.

At 3:20 PM court reconvenes herein and all being present

as before, including all the defendants and jurors, and counsel stipulating that all the defendants and jurors are present, Court orders trial proceed.

Attorney Neukom resumes argument.

Attorney Leonard moves for a mistrial and Court denies said motion.

Attorney Margolis moves for a mistrial and Court denies said motion.

At 4:15 PM Court admonishes the jurors and declares a recess. It is stipulated that the jurors have left the court room and defendants remain.

Attorney Wirin makes a statement.

[fol. 631] At 4:19 PM Court declares a recess. At 4:32 PM court reconvenes herein and all being present as before, except the jurors, all the defendants being present, and counsel so stipulating, Court orders trial proceed.

Attorney Branton makes a statement.

At 4:40 PM the jury is summoned into court, and it being stipulated that all the jurors are present, Attorney Neukom resumes argument.

At 5 PM Court admonishes the jurors not to read newspapers or listen to radio, etc., in addition to the usual admonition not to discuss this cause, and excuses the jurors until 1:30 PM, July 31, 1952.

Court declares a recess herein to 11 AM, July 31, 1952, for further jury trial.

Edmund L. Smith, Clerk, by P. D. Hooser, Deputy Clerk.

[fol. 632] IN UNITED STATES DISTRICT COURT

[Title omitted]

No. 22131—Criminal

MINUTES OF THE COURT—July 31, 1952

At: Los Angeles, Calif.

Present: The Honorable Wm. C. Mathes, District Judge.
Deputy Clerk: P. D. Hooser.
Reporters: A. H. Bargion, S. J. Trainor.
Counsel for the Plaintiff: Walter S. Binns, U.S. Atty.;

Norman W. Neukom, Ray H. Kinnison, Asst. U.S. Attys.; Lawrence K. Bailey, Spec. Asst. to Atty. Gen.

Counsel for the Defendants: Ben Margolis, for Oleta O'Connor Yates and Albert Jason Lima;

Alexander H. Schullman, for Philip Marshall Connelly and Dorothy Healey Connelly, charged as Dorothy Rosenblum Healey;

Leo Branton, Jr., for Henry Steinberg, Ben Dobbs, aka Benjamin Isgur, and Carl Rude Lambert;

Norman Leonard, for Loretta Starvus Stack, Ernest Otto Fox, aka Ernest Otto Fuchs, and Frank Carlson, aka Solomon Szkolnick;

A. L. Wirin, for Al Richmond, aka Abraham Richman, Rose Chernin Kusnitz and Frank Efroim Spector;

Defendant William Schneiderman, appearing in propria persona.

Proceedings: Further jury trial of the above-named 14 defendants who are on bond, except defendant Yates, who is in custody.

It is stipulated that the jury is absent and the defendants present. Government's exhibit 750-C is marked for identification. Defendants' exhibits NF and NG are received into evidence in support of motion for mistrial only.

Defendants' exhibit NE is withdrawn.

Attorney Schullman argues in support of motion for mistrial.

Attorney Branton argues in support of the motion.

Attorney Margolis argues in support of the motion.

At 12:38 PM. the Court recesses to 1:30 PM. without jury.

At 1:52 PM. the Court reconvenes without jury and defendants are present. Attorneys Leonard, Binns, make statement regarding motion for mistrial. Defendants' exhibit NH is marked for identification. The Court refuses instructions.

Motions for mistrial are denied.

Defendants' exhibits NC1, NC2 and NC3 are marked for identification.

At 2:30 PM. the jury is brought in and the Court instructs the jury.

At 3:05 PM. the jury is admonished and recesses.

At 3:17 PM. the Court reconvenes and all are present

including the jury. The Court resumes instructing the jury.

At 3:53 PM. the jury is admonished and excused for recess. The jury left the room and the defendants remain. Attorney Leonard and the Court discuss defendants' objections to instructions.

At 4:18 PM. the jury returns to the Courtroom and so stipulate.

At 4:20 PM. John M. Scheibe, W. S. Sweeney, Floyd O. Strong, Mary L. Ross and Maude Purdy are sworn to care for the jury.

Bailiffs ordered to take the jury to supper at 5:30 PM. at Government expense.

Alternate jurors Ahne Izen, Lillian Cohen, Alfred Murray and Elsa M. Jansson are admonished and excused under certain conditions until further orders.

[fol. 633] MINUTES OF THE COURT: Jury Trial Criminal —Page 2

The jury and alternates have retired from the Courtroom and the defendants remain.

The Counsel are requested to stipulate as to all exhibits in evidence and to furnish a list of said exhibits.

Defendants' exhibit MZ-2 is marked for identification.

The instructions given to the jury are filed.

At 5:30 PM. the jury is taken to supper accompanied by bailiffs Sweeney, Scheibe, Ross and Purdy.

At 7:15 PM. the jury returned to the juryroom.

At 9:00 PM. the jury is ordered taken to Hotel Rosslyn for the night and to breakfast tomorrow morning.

IT IS ORDERED that the cause is continued to August 1, 1952, 10 AM. for further trial.

Edmund L. Smith, Clerk, By P. D. Hooser, Deputy Clerk.

[fol. 634-648] In United States District Court

[Title omitted]

No. 22131—Criminal

Minutes of the Court—August 5, 1952

At Los Angeles, Calif.

Present: The Honorable Wm. C. Mathes, District Judge.
Deputy Clerk: P. D. Hooser.
Reporter: A. H. Bargion.
U. S. Attorney: Walter S. Binns.
Counsel for Plaintiff: Norman W. Neukom, Ray H. Kinnison, Asst. U. S. Attorneys.
Counsel for Defendant: Lawrence K. Bailey, Spec. Asst. to the Atty. Gen. Ben Margolis, for Oleta O'Connor Yates, Albert Jason Lima; Alexander H. Schillman (absent), for Philip Marshall Connelly, Dorothy Healey Connelly, charged as Dorothy Rosenblum Healey;
Leo Branton, Jr., for Henry Steinberg, Ben Dobbs, aka Benjamin Isgur, Carl Rude Lambert;
Norman Leonard, for Loretto Starvus Stacks, Ernest Otto Fox, aka Ernest Otto Fuchs, Frank Carlson, Aka Solomon Szkolnick;
A. L. Wirin, for Al Richmond, aka Abraham Richman, Rose Chernin Kusnitz, Frank Efroim Spector;
William Schneiderman, appearing in pro. per.
Proceedings: Further trial of the above-named 14 defendants who are present on bond except defendant Yates who is present in custody.
Jury is deliberating. To jury room at 9:30 AM.
At 11:38 AM all present except the jury and so stipulate note from foreman read by the Court and ordered filed stating that the jury has reached a verdict.
At 11:40 AM. the jury brought in the Courtroom and so stipulate Court asks foreman if—has reached a verdict and foreman replies they have and a separate verdict of guilty as to each defendant is presented and ordered read and is read by the Clerk. Each juror is polled separately as to each defendant and confirms the verdict of guilty as his or her verdict. The verdicts are ordered filed. The verdicts are filed.

The Court makes a statement to the jury and reads Title 18, Sec. 1503 to the jury. Every person in the courtroom, their agents, servants, etc., is enjoined from interfering in any way with any juror.

At 12:15 PM. the jury is excused from further service until further call, but not discharged. 4 alternate jurors are now discharged.

Attorney Schullman requests defendants be allowed to remain on bond until hearing on pending motions for judgment of acquittal.

Attorney Binns objects to request of Attorney Schullman.

The Court directs that no presentence investigation or report be made by the Probation Officer.

The defendants are ordered remanded to the custody of Marshal and bail exonerated, to be returned to Court tomorrow morning. The Court makes an oral order regarding all defendants as heretofore made on June 30, 1952 regarding defendant Yates.

At 12:42 PM. the Court recesses to 11 AM., August 6, 1952.

Edmund L. Smith, Clerk, By P. D. Hooser, Deputy Clerk.

[fol. 649] IN UNITED STATES DISTRICT COURT

No. 22131-Crim.

[Title omitted]

MINUTES OF THE COURT—August 6, 1952

At: Los Angeles, Calif.

Present: The Honorable Wm. C. Mathes District Judge.
Deputy Clerk: P. D. Hooser.
Reporters: Jack D. Ambrose, A. H. Bargion.
U.S. Attorney: Walter S. Binns.
Counsel for Plaintiff: Norman W. Neukom, Ray H. Kinnison, Asst. U.S. Attys.
Lawrence K. Bailey, Spec. Asst. to the Atty. Gen.;

Counsel for Defendant: Ben Margolis, for Oleta O'Connor Yates, Albert Jason Lima;

Alexander H. Schullman, for Philip Marshall Connelly, Dorothy Healey Connelly, charged as Dorothy Rosenblum Healey;

Leo Branton, Jr., for Henry Steinberg, Ben Dobbs, aka Benjamin Isgur, Carl Rude Lambert;

Norman Leonard, for Loretta Starvus Stack, Ernest Otto Fox, aka Ernest Otto Fuchs, Frank Carlson, aka Solomon Szkolnick;

A. L. Wirin, for Al Richmond, aka Abraham Richman, Rose Chernin Kusnitz, Frank Efroim Spector;

Defendant William Schneiderman, appearing in pro. per.

Proceedings: Further proceedings; defendants present in custody.

At 11:20 AM. defendants are present with counsel.

Robert Morris of American Civil Liberties Union makes a statement.

Attorney Leonard argues in support for judgment of Acquittal on behalf of all defendants.

Attorney Wirin argues in support of motions for judgment of acquittal as to all defendants.

At 12:30 PM. recess to 1:45 PM.

At 1:58 PM. the Court reconvenes and all are present including defendants.

Attorney Branton argues in support of motion for judgment of acquittal.

At 2:08 PM. Attorney Margolis argues in support of motion.

At 2:45 PM. Attorney Schullman argues in support of motion.

At 3:03 PM. recess. At 3:30 PM. the Court reconvenes and all present as before.

Defendant Schneiderman argues in support of motion. The Government submits the matter on the basis of argument previously made. Motions stand submitted.

Motion in arrest of judgment served and filed.

Motion for new trial served and filed.

Motion in behalf of all defendants for leave of their counsel to interview the jury after verdict is served and filed.

Motion in arrest of judgment is denied.

Motion in behalf of all defendants for leave of their counsel to interview the jury after the verdict is denied.

Motion for new trial submitted along with pending motion for judgment of acquittal.

Order to Marshal signed by the Court with respect to permitting defendants to consult with counsel and is filed.

Ruling on pending motions is continued to 11 AM. tomorrow, August 7, 1952.

The Court adjourns at 3:50 PM.

Edmund L. Smith, Clerk, by P. D. Hooser, Deputy Clerk.

[fol. 650] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

No. 22131 CD

[Title omitted]

MOTION IN ARREST OF JUDGMENT—Filed August 6, 1952

To the United States of America, plaintiff, and to Walter S. Binns, United States Attorney, its Attorney:

Please take notice that the defendants Frank Carlson, Philip Marshall Connelly, Ben Dobbs, Ernest Otto Fox, Dorothy Healey Connelly, Rose Cherrin Kusnitz, Carl Rude Lambert, Albert Jason Lima, Al Richmond, William Schneiderman, Frank Spector, Loretta Starvus Stack, Henry Steinberg and Oleta O'Connor Yates, and each of them, moves the Court for an order in arrest of judgment upon the following ground:

1. The indictment herein does not state facts sufficient to constitute an offense against the United States.

This motion is and will be based upon Rule 34 of the Federal Rules of Criminal Procedure, the memorandum of points and authorities annexed hereto, and upon the

[fols. 651-652] transcript of evidence, records, files and proceedings herein.

Respectfully submitted, Leo Branton, Jr., Attorney for Defendants Henry Steinberg, Ben Dobbs, Carl Rude Lambert; Norman Leonard, Attorney for Defendants Loretta Starvus Stack, Ernest Otto Fox, Frank Carlson; Ben Margolis, Attorney for Defendants Oleta O'Connor Yates, Albert Jason Lima; Alexander H. Schullman, Attorney for Defendants Dorothy Healey Connelly, Philip Marshall Connelly; A. L. Wirin, Attorney for Defendants Rose Chernin Kusnitz, Al Richmond, Frank Spector; William Schneiderman, In Pro Per.

[fol. 653] [File endorsement omitted]

IN UNITED STATES DISTRICT COURT

No. 22131 CD

[Title omitted]

MOTION FOR NEW TRIAL—Filed August 6, 1952

To the United States of America, plaintiff, and to Walter S. Binns, United States Attorney, its Attorney:

Please take notice that each of the defendants, Frank Carlson, Philip Marshall Connelly, Ben Dobbs, Ernest Otto Fox, Dorothy Healey Connelly, Rose Chernin Kusnitz, Carl Rude Lambert, Albert Jason Lima, Al Richmond, William Schneiderman, Frank Spector, Loretta Starvus Stack, Henry Steinberg and Oleta O'Connor Yates, moves the Court for an order granting him or her a new trial upon the following grounds:

1. The Court erred in denying defendants' motions for judgment of acquittal made at the conclusion of the evidence presented in the prosecution's case in chief, and at the conclusion of the evidence presented in the entire case;
2. The verdict is contrary to the weight of the evidence;
3. The verdict is not supported by substantial evidence;

[fol. 654] 4. The statutes under which the defendants were indicted as construed by the Court and as applied by the Court and the jury to the evidence are unconstitutional and violate the defendants' rights of speech, press and assembly guaranteed by the First, Ninth and Tenth Amendments to the Constitution, deprive the defendants of their liberty without due process of law in violation of the due process clause of the Fifth Amendment and the provisions of the Sixth Amendment;

5. The Court erred in sustaining objections to questions addressed to witnesses by counsel for the defendants;

6. The Court erred in admitting testimony of witnesses to which objections were made by counsel for defendants;

7. The Court erred in sustaining objections to the offer of exhibits on behalf of the defendants;

8. The Court erred in admitting exhibits over the objections of counsel for defendants;

9. The Court erred in denying defendants the opportunity to prove that the Smith Act is unconstitutional as applied;

10. The Court erred in denying the defendants' several motions for mistrial;

11. The Court erred in denying defendants' several motions to dismiss the indictment;

12. The Court erred in denying defendants' several motions to strike the testimony of the prosecution witnesses as contained in their motions to strike testimony and exhibits filed in writing during the trial;

13. The Court erred in denying defendants' request for a bill of particulars;

14. The Court erred in charging the jury and in refusing to charge the jury as requested.

This motion is and will be based upon Rule 33 of the Federal Rules of Criminal Procedure, the memorandum [fols. 655-656] of points and authorities annexed hereto, and upon the transcript of evidence, records, files and proceedings herein.

Respectfully submitted, Leo Branton, Jr., Attorney for Defendants Henry Steinberg, Ben Dobbs, Carl Rude Lambert; Norman Leonard, Attorney for Defendants Loretta Starvus Stack, Ernest Otto

Fox, Frank Carlson; Ben Margolis, Attorney for Defendants Oleta O'Connor Yates, Albert Jason Lima; Alexander H. Schullman, Attorney for Defendants Dorothy Healey Connelly, Philip Marshall Connelly; A. L. Wirin, Attorney for Defendants Rose Chernin Kusnitz, Al Richmond, Frank Spector; William Schneiderman, In Pro Per.

[fols. 657-764] IN UNITED STATES DISTRICT COURT

No. 22131-Criminal

[Title omitted]

MINUTES OF THE COURT—August 7, 1952

At: Los Angeles, Calif.

Present: The Honorable Wm. C. Mathes, District Judge.

Deputy Clerk: P. D. Hooser. Reporter: A. H. Bargion, S. J. Trainor (AT 1:45 PM.)

Counsel for Plaintiff: Walter S. Binns, US Atty., Ray H. Hinnison and Norman W. Neukom, Asst. US Attys., Lawrence K. Bailey, Spec. Asst. to the Atty Genl.

Counsel for Defendant: Ben Margolis, for Oleta O'Connor Yates, Albert Jason Lima; Alexander H. Schullman, for Philip Marshall Connelly, Dorothy Healey Connelly, charged as Dorothy Rosenblum Healey; Leo Branton, Jr., for Henry Steinberg, Ben Dobbs, aka Benjamin Isgur, Carl Rude Lambert; Norman Leonard, for Loretta Starvus Stack, Ernest Otto Fox, aka Ernest Otto Fuchs, Frank Carlson, aka Solomon Szkolnick; A. L. Wirin, for Al Richmond, aka Abraham Richman, Rose Chernin Kusnitz, Frank Efroim Spector; Defendant William Schneiderman, appearing in pro. per.

Proceedings: Further proceedings; defendants present in custody.

All parties present including counsel and defendants.

Attorney Binns argues in opposition to motion for Judgment of Acquittal. Attorney Margolis argues in support of motion in reply to Atty Binns. Attorney Binns argues.

Atty. Schulman argues. Atty Wirin argeus, Atty Neukom argues. At 12:33 PM. the Court recesses to 1:45 PM. At 1:50 PM. the Court reconvenes and all are present as before.

Atty Leonard argues. Atty. Neukom argues. Atty. Margolis argues. Atty. Schullman argues. The Court makes a statement.

The Court denies motion for Judgment of Acquittal.

Defendants' motion for Leave to Interview Jury after verdict filed August 6, 1952 is marked for identification as defendants' exhibit NJ. Defendants' exhibits NF, NG and NJ are deemed as being incorporated in defendants' motion for a new trial.

Motion for a new trial is denied.

Atty. Wirin makes a statement on behalf of all defendants prior to sentence. The Defendants are ready for sentence. At 2:53 PM. the Court recesses and at 3:06 PM. the Court reconvenes and all are present.

It is adjudged that defendants Oleta O'Connor Yates; Albert Jason Lima; Philip Marshall Connelly; Dorothy Healey Connelly, charged as Dorothy Rosenblum Healey; Henry Steinberg; Ben Dobbs aka Benjamin Isgur; Carl Rude Lambert; Loretta Starvus Stack; Ernest Otto Fox aka Ernest Otto Fuchs; Frank Carlson aka Solomon Szkolnick; Al Richmond aka Abraham Richman; Rose Chernin Kusnitz; Frank Efroim Spector; and William Schneiderman are hereby committed to the custody of the Attorney General or his authorized representative for imprisonment for a period of five years, and shall pay to the United States of America a fine of Ten Thousand Dollars for the offense charged in the indictment; and be further imprisoned until said fine is paid or he is otherwise discharged as provided by law.

It is further adjudged that the term of imprisonment herein imposed on defendant Oleta O'Connor Yates shall run concurrently with the period of imprisonment here imposed upon the defendant Oleta O'Connor Yates for civil contempt on June 26, 1952, in civil proceeding No. 14291, pending in this court.

It is adjudged that bail of the defendants is exonerated.

Notice of Appeal as to each defendant is filed. Atty. Schullman applies for bail pending appeal in amounts as heretofore set for each defendant in this case. At 5:15 PM.

the Court recesses. At 5:35 PM. the Court reconvenes and all present. Counsel argue. The Court denies application for bail pending appeal. Defendant Yates is ordered to return to Court tomorrow at 11 AM. for further proceedings regarding criminal contempt.

Edmund L. Smith, Clerk. By P. D. Hooser, Deputy Clerk.

7:22 P. M. adjourn.

[fols. 765-766] MINUTE ENTRIES OF ARGUMENT AND SUBMISSION—July 12 and 14, 1954 (Omitted in Printing)

[fol. 767] IN UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Before: STEPHENS, FEE and CHAMBERS, Circuit Judges.

MINUTE ENTRY OF ORDER DIRECTING FILING OF OPINION AND FILING AND RECORDING OF JUDGMENT—March 17, 1955

Ordered that the typewritten opinion this day rendered by this Court in above causes be forthwith filed by the Clerk, and that a Judgment be filed and recorded in the minutes of the Court in accordance with the opinion rendered.

[fol. 768] IN UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 13,480

OLETA O'CONNOR YATES, HENRY STEINBERG, LORETTA STARVUS STACK, Frank Efroim Spector, William Schneiderman, Al Richmond, Albert Jason Lima, Carl Rude Lambert, Rose Chernin Kusnitz, Ernest Otto Fox, Ben Dobbs, Dorothy Healey Connelly, Philip Marshall Connelly and Frank Carlson, Appellants,

vs.

UNITED STATES OF AMERICA, Appellee

Upon Appeals from the United States District Court for the Southern District of California, Central Division

OPINION—March 17, 1955

Before: STEPHENS, FEE and CHAMBERS, Circuit Judges

JAMES ALGER FEE, Circuit Judge:

Defendants in this criminal case were convicted by a jury upon an indictment which charged them as participants in a conspiracy to commit crimes with the specific intent of causing the overthrow of the Government of the United States by force and violence as speedily as circumstances would permit. The trial lasted over a period of some six months, and the jury, before returning its verdicts, took six full days for deliberation. Each defendant has appealed from the judgment of conviction entered pursuant to the finding of the jury. Every phase of the indictment, the [fol. 769] trial, the instructions and the theory of the Court has been raised by motion, objection, exception and assignment of error.[1]

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[1] A motion for bill of particulars was made and denied, a motion to suppress evidence upon the ground that the methods whereby it was obtained were illegal, a motion to dismiss the indictment on the grounds it was barred by "res adjudicata," a motion to order government agents to desist from surveillance during the trial, a motion to in-

The impressive feature of this case is that practically every assignment of error urged in this appeal has been ruled upon by the Supreme Court of the United States in Dennis vs. United States, 341 U. S. 494.[2] There the basic statute in the original form was held "inherently" constitutional and also as applied to a situation involving a similar conspiracy connected with the unlawful concert found to exist in the case at bar. In the main and concurring opinions, principles were laid down which are virtually conclusive here. The defendants, notwithstanding this positive holding, paradoxically complain that the trial court here denied their motion to take testimony on written interrogatories with respect to the impact of the Smith Act and its enforcement on First Amendment rights, and rejected an offer of proof on the ground that the Dennis decision had foreclosed any further proof of unconstitutionality on the facts then before that court.

Defendants principally contend, as they must to prevail, that the trial court here departed in the course of the trial from the mandate so laid down by the Supreme Court. A careful analysis must be made of the opinions of the highest court, the statute as then written and the indictment in that case in order to appraise the claims of error in the instant appeal.

[fol. 770] The indictment in the Dennis case was drawn

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vestigate alleged hampering of one of defendants prior to trial were made and denied. There were motions to strike from evidence declarations of third parties on various grounds. There were several motions for mistrial, and finally there were motions for arrest of judgment. Other motions of various types were made and denied. The opinion deals specifically with certain of these motions. Generally, the discussion covers the points raised. It would extend the discussion intolerably to cover each in detail. The rulings were not erroneous.

[2] In the District Court, this case was entitled United States vs. Foster, 9 F.R.D. 367. The opinion of the Court of Appeals of the Second Circuit appears as United States vs. Dennis, 183 F. 2d 201. Throughout the opinion here, that case will be referred to as "Dennis" in whatever court the particular proceeding may have taken place.

in accordance with the basic statute, which appeared as Sections Ten and Eleven of Title 18, U.S.C. (1946 Ed.). Section Ten, as originally enacted and as it was in force at that time, read as follows:

> "(a) It shall be unlawful for any person——
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> "(1) to knowingly or willfully advocate, abet, advise, or teach the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence, or by the assassination of any officer of any such government;
> "(2) with the intent to cause the overthrow or destruction of any government in the United States, to print, publish, edit, issue, circulate, sell, distribute, or publicly display any written or printed matter advocating, advising, or teaching the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence;
> "(3) to organize or help to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any government in the United States by force or violence; or to be or become a member of, or affiliate with, any such society, group, or assembly of persons, knowing the purposes thereof."

Original Section Eleven read as follows:

> "It shall be unlawful for any person to attempt to commit, or to conspire to commit, any of the acts prohibited by the provisions of sections 9-13 of this title."

In the light of this statute, the Supreme Court wrote the principles which defendants say the trial court here refused to follow in several essentials. First, it is contended that basic liberties guaranteed by the First Amendment and other constitutional provision were submerged by an expanding wave of restraint brought about by an improper application of the Smith Act. Second, they say the highest court required a finding of a clear and present danger from the conspiracy, and none was made at this trial. Third, defendants claim the approval of the Supreme Court of [fol. 771] certain other striking phrases given currency in

the trial of the Dennis case constituted positive fiat that these be used in all future cases.

First, the Supreme Court ruled definitely that constitutionally guaranteed rights, including freedom of speech, of publication and of assembly, were not violated by indictment and conviction under the Smith Act in the form above quoted. The courts were dealing there with substantive law as set out in that statute, which related to organization for the purpose of teaching and advocating overthrow. Section Eleven of the Act as it then read, by use of the words "to conspire to commit," denounced as principals all who engaged in the attempt or in joint action to bring about the acts specified as criminal. Mere membership or officership in the Communist Party, insofar as that organization was shown by the evidence to teach the proscribed doctrine, might have been taken as proof against the individual defendant of joint action with others to bring about the end intended.

However, in face of the challenge of the dissents there, the Supreme Court held the nature of the joint activities of those involved was such as to bring about a "clear and present danger" and that, collectively, the conspirators had "power to bring about the evil." The latter phrase apparently meant that the setting in which the defendants there acted was such as to allow the court to conclude that the teachings might have resulted in an attempt at overthrow. It is true that, in accomplishing the result, the courts treated the Smith Act as though the substantive crime of conspiracy were charged. Moreover, the appellate courts approved the importation into the statute of a specific intent and object which was not expressly authorized by the wording of the particular section and which was not incorporated in the formal charge. As we shall see hereafter, the current indictment gave scope for these judicial additions.

Specifically in the second place, it is said the trial judge here violated principles there enunicated by failing to find a "clear and present danger" to the government by whatever the proof showed was said and done by defendants. In the Dennis case, with a factual situation typical of the case at bar, the highest court approved a statement as a mat- [fol. 772] ter of law by the trial judge that a clear and

present danger there existed in virtue of acts and intent of the defendants in that group. If that were a true rule of law for the Dennis case, it is the rule of law here. For world conditions at the date of that trial had not changed for the better when trial in the instant case was had. It must be remembered that the eleven convicted defendants in that case were named in this indictment as co-conspirators although not made defendants. Much of the literature and writings introduced were identical, as was the general type of proof, although we attempt no comparison of the respective records. While an independent conspiracy was charged here, the design was as closely connected as to the previous combination as a spoke to the wheel.[3] There

Finally, the opinion of the Court of Appeals and a concurring opinion in the Supreme Court gave approval of instructions of the trial judge in Dennis requiring the jury to find "language of incitement" was used by the conspirators there. Another phrase given approval is that the doctrine of destruction had become a "rule of action." In conjunction with an indictment based upon such a statute proscribing organization for the purpose of teaching and advocating overthrow, but which required neither proof of overt acts nor a specifically planned objective, such precautionary instructions were well enough. But these expressions of the judges in instructions in connection with the original statute established no unalterable requirement that such phrases themselves be used *ipsissimis verbis* where the changes in the basic law and an entirely different indictment predicated upon the conspiracy statute have rendered admonitions to a jury in such language supererogatory. Such claims have been answered in the main opinion in Dennis:

> "Speech is not an absolute, above and beyond control by the legislature when its judgment, subject to review

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[3] See Kotteakos vs. United States, 328 U. S. 750.
organization was charged nationally, and here there was special emphasis on organization in California. The essential pattern was similar. Since this may not be the exact point of the contention, the matter will be considered in other connections later.

> here, is that certain kinds of speech are so undesirable as to warrant criminal sanction. Nothing is more [fol. 773] certain in modern society than the principle that there are no absolutes, that a name, a phrase, a standard has meaning only when associated with the considerations which gave birth to the nomenclature. * * * To those who would paralyze our Government in the face of impending threat by encasing it in a semantic straitjacket we must reply that all concepts are relative."

Defendants themselves say that there were significant legal and factual differences between the situation in the Dennis case and the case at bar. We agree. The situation has been changed by farreaching legislation and rulings in further and complete protection of the rights of these defendants. As a result, there are vital distinctions between this case and those which have been previously ruled upon.

The question is whether the trial court here followed the applicable concepts of Dennis in a changed situation. The attacks upon the manner in which the case at bar was tried and the incidents are now for consideration.

The indictment [4] charged the defendants themselves and certain persons convicted in the Dennis case with conspiring (18 U.S.C.A. Section 371) to commit offenses against the United States prohibited by the Smith Act as amended, 54 Stat. 670 (1940); 18 U.S.C. (1946 Ed.) Section 10, (1948 [fol. 774] Ed.) Section 2385,[5] "by (1) willfully and know-

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[4] The comparison of the indictments in the Dennis case and the case at bar is graphically set out in United States vs. Schneiderman, 102 F. Supp., at pages 97-102.

[5] The Smith Act, in the form in which it appeared upon the books at the time of the trial here and at present, reads as follows:

"Whoever knowingly or willfully advocates, abets, advises, or teaches the duty, necessity, desirability, or propriety of overthrowing or destroying the government of the United States or the government of any State, Territory, District or Possession thereof, or the government of any political subdivision therein, by force or violence,

ingly advocating and teaching the duty and necessity of overthrowing the Government of the United States by force and violence with the intent of causing the aforesaid overthrow and destruction of the Government of the United States by force and violence as speedily as circumstances would permit and by (2) willfully and knowingly organizing and helping to organize as the Communist Party of the United States of America a society, group and assembly of persons who teach and advocate the overthrow and destruction of the Government of the United States by force and violence with the intent of causing the aforesaid overthrow and destruction of the Government of the United States by force and violence as speedily as circumstances would permit."

The means were elaborated by charging, as a part of the conspiracy, the matters epitomized as follows: (2) "conspirators would become members, officers or functionaries in the Communist Party" "and in such capacities would assume leadership" "and responsibility for carrying out its policies and activities"; (3) would cause to be organized units of the party in New York and California and would recruit members; (4) would publicize and circulate publica-

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or by the assassination of any officer of any such government; or

"Whoever, with intent to cause the overthrow or destruction of any such government, prints, publishes, edits, issues, circulates, sells, distributes, or publicly displays, any written or printed matter advocating, advising, or teaching the duty, necessity, desirability, or propriety of overthrowing or destroying any government in the United States by force or violence, or attempts to do so; or

"Whoever organizes or helps or attempts to organize any society, group, or assembly of persons who teach, advocate, or encourage the overthrow or destruction of any such government by force or violence; or becomes or is a member of, or affiliates with, any such society, group, or assembly of persons, konwing the purposes thereof——

"Shall be fined not more than $10,000 or imprisoned not more than ten years, or both, and shall be ineligible for employment by the United States or any department or agency thereof, for the five years next following his conviction." 18 U.S.C.A. § 2385.

tions advocating overthrow; (5) would write articles and directives for printing in publications of the Communist Party; (6) would conduct schools and classes in which recruits and members would be indoctrinated; (7) would agree upon and carry into effect plans for vital parts of the Communist Party to go underground and there continue the conspiracy; (8) would use false names and documents to conceal their identities and activities as members and [fol. 775] functionaries, and (9) would conceal the existence and operations of the conspiracy.

A series of overt acts were alleged to have been done by one or more defendants "in furtherance of the objective of the conspiracy."

The first of the differences btween this and the Dennis case is that the present indictment charges the inception of this crime as a continuing conspiracy on June 28, 1940, and in full effect until the date of finding of the indictment, which was December 21, 1951. This, of course, constitutes no ground for objection to the indictment. The mere fact that the indictment for the coordinate activities in the Dennis case was less broad in scope is of no avail to defendants here. Certain phases of the claim of variance will be dealt with later.

Second, it is contended that a change was caused by legislation for the protection of defendants. A new Act provided that officership or membership in the Communist Party should not constitute "per se" a violation of that Act, requiring registration by such members, "or of any other criminal statute."[6] Likewise, it was provided therein that registration by a Communist member or officer under that Act should not be used as evidence against him in any criminal proceeding. Apparently, this made a change in the law previously, as teachers and club chairmen were held to be in the position of co-conspirators in the Dennis case. 183 F. 2d 230, 231. At this point, concern is had only with the effect of the section just referred to upon the indictment. The divergence from the form of indictment used in the Dennis case required peculiar phrasing emphasizing the

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[6] September 23, 1950, ch. 1024, Title 1, Section 4, 64 Stat. 991, 50 U. S. C. A. Section 783(f).

individual nature of the charge. The instrument here highlights the fact that, among the means agreed upon, the individual defendants were to obtain membership and offices and assume leadership in order to bring about the objective charged. The Communist Party of the United States was not indicted. No defendant was indicted for organizing the Communist Party of the United States. None was charged with guilt because of membership or holding office in that party. But each was fairly charged with joining in concert [fol. 776] of action to organize a society "as the Communist Party" and to use leadership therein with the intent to accomplish overthrow.

The third change was farreaching. Since the Supreme Court had upheld a conviction for joint action under substantive provisions of the Smith Act as then written, it was a great protection that Congress, by the change in the wording of the law, left the way open to discard the vague "conspiracy" clause of the original statute, and to use instead the standardized body of law with which the profession was familiar by framing the indictment under the specific enactment proscribing conspiracy as a substantive offense.

This section, which was first placed upon the books in the year 1867, is now codified with some changes as 18 U. S. C. A. Section 371, which reads in part as follows:

> "If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each shall be fined not more than $10,000 or imprisoned not more than five years, or both."

The literature of the law relating to the substantive crime of conspiracy is voluminous and covers every phase of indictment, trial and judgment.[7] The use of the statute in this case was of great advantage to defendants as well as the government, since the precedents made the issues crys-

[7] The notes of decisions under this statute cover over 315 pages of United States Code Annotated.

tal clear [8] and enabled the trial judge to rule with justice. Specifically, this charge of the substantive crime of conspiracy placed the government under heavy burden as to proof, which will be explained hereafter. In the Dennis case, the courts treated the original Smith Act quoted above as containing a charge of conspiracy and applied the law without any of the limitations set up by the precedents which have been developed under Section 371. It cannot therefore be charged by any except a lawyer impelled by zeal for a client that the instant case is one "where prosecu- [fol. 777] tion for the substantive offense is adequate and the purpose served by adding the conspiracy charge seems chiefly to get procedural advantages to ease the way to conviction." But the objection is, of course, urged here by lawyers for the defendants. The concurring opinion of Mr. Justice Jackson in the Dennis case, which treated the indictment there as if it contained a charge of conspiracy as a substantive crime, was, of course, unsound as related to that case. The doctrine was treated as applicable in that opinion although the limitations contained in the statute are not mentioned. Although it is clear that, in the opinion of the other justices, a true conspiracy charge was not involved, the convictions were upheld in the face of the exposition of the place in our political structure which is maintained by personalized individual freedom of speech, publication and assembly.

An indictment which, as the one at bar, charges an agreement by two or more persons willfully and knowingly to organize a group, society or assembly of persons and thereby develop and use an apparatus designed and dedicated to advocate and teach overthrow and destruction of the government by force and violence when each person entering the concert of action is charged with entertaining the specific objective and intent of causing such overthrow pleads a "standard" conspiracy.

Where an unlawful agreement is set up, even though the means intended to be used were entirely legal, if the ultimate objective be criminal, a conspiracy is alleged. Under this indictment, if it be assumed that advocacy and teaching are

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[8] Cf. Pinkerton vs. United States, 328 U. S. 640.

immunized by the constitutional guaranties, still, even though these means were lawful and protected, since the advocacy was intended to cause the destruction and overthrow of the government by force, a criminal conspiracy was defined.

An overwhelming advantage to each defendant by indictment under 18 U. S. C. A. Section 271, was the provision thereof which required an "overt act" to be proved as well as a "conspiracy" before conviction could be had under this phase of the Smith Act itself. This was a farreaching change from the situation in the Dennis case for persons accused. By the statement of things actually done by a particular person or persons, the matter was not left to conjecture as to the nebulous design based upon utterances [fol. 778] and publications alone, but specific occurrences were to be set up whereby the supposed conspirators in unlawful agreement effected a debouchment into the field of positive action. Defendants make an elaborate theoretical argument that the "act of conspiring" or "compassing by bare words or saying" or "the imagination of the mind to do wrong" is not sufficient "without an overt act." However effective this thesis might have been in the Dennis case, it is frustrated and rendered nought by the form of the indictment. Congress had already answered the theoretical thesis by the amendment above noted, which emphasizes the deep gulf between the situation here and that in the Dennis case. But the pleader here included the overt acts charged as carrying out the "standard" conspiracy of Section 371. Twenty-one allegations of overt acts were made, which is sufficient. The suggestion that the acts alleged were in themselves innocuous is not valid. The law relating to this crime does not require more than the allegation contained in the indictment that these were done in pursuance of the unlawful agreement and to effect the purpose thereof.

The principles of freedom applied to speech, publication and assembly must be preserved. Under the instant indictment, there are implications which must be considered, but the impact is much less direct than in the Dennis case. As heretofore indicated, the charge here is of a substantive conspiracy to act with a definite objective where one overt

act must be alleged. The teaching and advocacy of the duty and necessity of destruction of the government by force and violence, although criminal by substantive enactment, are here by the langauge of the charge made subservient to the alleged purpose and object of organizing to advocate and teach with intent to destroy and overthrow as speedily as circumstances permit. The indictment in the Dennis case was entirely different.

Finally, a vital metamorphosis was brought about by attacks of defendants themselves upon the two original indictments. The trial judge held that such indictments did not sufficiently state the ultimate object of the conspiracy and the individual intent of each conspirator to bring the postulated action to fruition. In redrafting, the pleader amalgamated the two indictments and added the words which had been approved by the Supreme Court as suffi- [fol. 779] cient to set forth a criminal state of mind in Dennis. The defendants were advised beforehand that the government was to establish as a prerequisite of conviction that each one had as an object "the overthrow and destruction of the Government of the United States by force and violence as speedily as the circumstances would permit." As noted above, it is hornbook law that a conspiracy is an agreement by two or more persons to accomplish a lawful objective by unlawful means or, on the other hand, by lawful means an illegal objective.[9] By making this one of the essentials of proof beyond a reasonable doubt by the government as to each individual before he could be designated

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[9] The trial court consistently and definitely ruled throughout the trial and the instructions that this was a conspiracy to violate the Smith Act. Although purists might find a difference between conspiring to teach, advocate and organize with intent to bring about speedy overthrow and destruction by force and violence and conspiring "to overthrow, put down, or destroy by force the Government of the United States," proscribed by 18 U. S. C. A. § 2384, the latter statute which was mentioned in the Dennis case (pp. 581-2) might well be applicable to the indictment here. No problem arises in that connection since the trial court clung to the theory that the Smith Act alone was applicable.

as a co-conspirator, by the process of stating in the indictment the objects of the alleged "standard" conspiracy, a chemical change was wrought therein.

Defendants made a motion to dismiss the present indictment. It is implicit in the contention thereon that they assert the phrases heretofore referred to must have been included and that it must be charged formally that the activities of defendants created a "clear and present danger," that each defendant had "power to bring about the evil," that defendants conspired and agreed to use the "language of incitement" in teaching and advocacy, and that defendants conspired and agreed to make the duty and necessity of overthrow a "rule of action." Defendants were hampered in making such arguments explicit because neither the indictment in the Dennis case nor that in the Flynn contained any such allegations.

The trial court correctly held that the indictment charging a standard conspiracy to commit offenses against the United States in violation of the amended Smith Act, by teaching, [fol. 780] advocating and organizing, alleging specific overt acts and defining precisely a proscribed intent, was sufficient.

Finally, in its present form, the indictment by its inherent terms charged not only that the language of incitement was used, but it was used in order that the proscribed doctrine should become a rule of action. It is the very gist and gravamen of the present charge that action was agreed upon in organizing local groups and societies in California and in infiltrating labor unions and other organizations. It was alleged that overt acts were committed. In ordinary crimes, this is sufficient. If conspirators to commit a crime of violence are charged with the use of speech or of writings or of meetings in order to obtain confederates, nothing further would be required than here contained.

This leads to another contention of defendants, which is laid at rest by the language of the charging instrument. It is contended that the trial court incorrectly defined the word "organize" used therein. But the indictment itself charges that the conspiracy was to organize a society, group and assembly of persons who advocate and teach the duty and necessity of overthrow "as the Communist Party." It is

alleged that the conspiracy continued until the date of the finding of the indictment. But the basic charge was expanded by the specific clause. "Organize" is defined by exact phraseology in Section (3) of the indictment as follows:

> "It was further part of said conspiracy that said defendants and co-conspirators would cause to be organized Groups, Clubs, Sections, District and State Units of said Party in the State of California and elsewhere and would recruit and encourage recruitment of members of said Party concentrating on recruiting persons employed in key bases, industries and plants."

Even if the Communist Party of the United States were given a constitution and by-laws in 1945, as defendants contend, by the help of the co-conspirators and had certain officers, this does not mark the date when this combination completed organization of a group, society or assembly of people who advocate and teach destruction *"as the Communist Party of the United States."*
[fol. 781] The dictionary definition of organization indicates that "to organize an army" is a phrase which clarifies the meaning of the verb. If one started out to organize the 25th Army with nothing more than the order creating the entity, organization would not be complete simply because the headquarters had been put together and the general officers and staff officers selected. The bare cadres of the regiment would not be sufficient. Recruitment, formation of units, completing officer personnel, regrouping of personnel in different units and expansion of various units to the prescribed or desired strength would be necessary. We may well agree that, once the 25th Army has been completely created to authorized strength and officered, thereafter recruiting for replacement or change of one regiment for another would not fall within the designation. The charge that there was a conspiracy to organize the 25th Revolutionary Army, there being no such organization at the time, might, of course, show that the concert of action for that purpose lasted for years.

This consideration brings up logically the next contention of the defendants that the Statute of Limitations barred

prosecution in this case. The indictment itself destroys this argument. As noted before, it charges a continuing conspiracy from June 28, 1940, to the date of finding the indictment. The contention is that the Communist Party of the United States was completely organized in 1945, and that therefore the statute ran against this portion of the charge. It has already been noted there is no charge of conspiracy to organize the Communist Party of the United States as such. The activities of organization are particularly defined in the indictment. There is no doubt that certain of these activities occurred within three years of the filing of the formal charge.

The accusation is of a continuing conspiracy. Even if the above considerations were unsound, still the indictment would be valid and timely because it is alleged that the conspiracy continued until the date of the finding in the indictment. If, in a conspiracy of a nonpolitical nature, it were alleged that the defendant combined and agreed to commit two offenses or crimes with the design to bring about an ultimate objective as soon as circumstances would permit and committed overt acts pursuant to the conspiracy within the three year period, the indictment would be suf- [fol. 782] ficient. Even if it were established by judicial knowledge or otherwise that one of the substantive crimes charged as the objective of the continuing conspiracy had been fully consummate and complete, so that the statute of limitations had run against prosecution of the substantive offense, still an indictment would lie for a conspiracy, the grand objective of which had not yet been attained. Here, where the charge is that each defendant acted with intent to bring about the overthrow and destruction of the Government of the United States, it cannot be assumed from reading the indictment that the defendants abandoned the conspiracy until the event which they intended had been consummated. Only one conspiracy is charged, to commit several offenses against the United States. Therefore, the mere fact, assuming it to have been proved, that the crime of organizing had been complete, the conspiracy would still have continued in order to teach and to advocate destruction.

In this place, because it is a logical development, the question of the scope of the conspiracy in time and the sup-

posed variance will be considered, although phases of proof and instructions enter therein. One of the most distorted concepts of the defendants is that, if an agent or attorney employed by the United States has taken a position in some criminal prosecution that the Communist Party was completely organized in 1945 or that a court has accepted such a position for the purposes of the case before them, the United States is thereby estopped in this case from taking any contrary position. This concept is not founded upon any familiar doctrine of double jeopardy, res adjudicata or estoppel by judgment. Defendants make the claim for all parties and each defendant, whether or not he may have had connection with the previous litigation.

These contentions will be squarely met. None of these claims is valid. These defendants, who were not parties to the Dennis case or the Flynn case [10] can hardly have been [fol. 783] prejudicial if the United States Attorney in Los Angeles charged a conspiracy separate from the ones in those cases, as initiated in 1940 and continuing until 1950. The principles laid down by the Supreme Court in the Dennis case are applicable, but no one has contended that the facts of the two cases were exactly the same. The mere fact that there was a connection between the defendants and the parties charged in the Dennis case and that the overall criminal design was the same is of no relevance. The government was not estopped from alleging and proving that these defendants conspired to help organize a society, group or assembly "as" a part of the Communist Party in the State of California.

The fact that another contention was made in another

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[10] In United States vs. Flynn (S.D. N.Y., unreported), the instruction was that the statute of limitations had run against the conspiracy so far as organizing was concerned. This may have been well enough as a precaution. Actually, it was prejudicial to defendants since the government was thereby relieved of the necessity of proving that the defendants combined to organize. The instruction on this feature was: "To find a defendant guilty, therefore, you must find that he conspired to teach, but it is not necessary that you find as well that he conspired to organize the Communist Party."

record or was stated by some court in dealing with other contentions is not binding here. The fact, if it be a fact, that there were constitution and by-laws adopted in 1945 would not mean that the party was organized except in the loose sense. But the organization of a group, society and assembly would not be completed by that formal constitution. There would still have to be members, and it was specifically charged that, to complete the membership in California, it was the design to add new groups and recruit new members. Of this defendants were on notice. They could not be heard to complain that in some other case the agents of the government proved something different. The defense offered no proof of a contrary state of facts than that shown here. Furthermore, there was not introduced in evidence any record in which the facts here claimed to have been adjudicated were established.

By the same process, the remainder of the defendants attempt to take advantage of the favorable opinion of the Supreme Court of the United States in the case entitled William Schneiderman vs. United States, 320 U. S. 118. Here again, no record was proven. The defendants here were not parties to the prior civil case. They could take no advantage of it, whatever the holding.

Furthermore, even as to Schneiderman himself, the denaturalization case was not res adjudicata. The record was [fol. 784] not introduced [11] as to him either. The true state of the matter was that the trial court there made findings of fact that Schneiderman was not attached to the principles of the Constitution of the United States because he was an officer in the Communist Party at the date of his admission, and cancelled his citizenship. The Supreme Court of the United States had no power to make findings on appeal, but dismissed the case, apparently on the ground that Schneiderman was not shown personally to have interpreted the Communist literature as advocating overthrow and that therefore the findings were clearly erroneous. Other opin-

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[11] The majority opinion of the Supreme Court without the dissent was introduced, which was highly favorable, but this did not supply the essential foundation required to establish such an affirmative defense.

ions there seemed to go on the ground that, at the naturalization hearing, the court had found that Schneiderman was attached to the principles of the Constitution. In any event, whatever the holding, it can do Schneiderman no good here. No precedent has been cited nor are there any which establish the doctrine that a prior judgment in a cancellation of citizenship case estops the government or that the findings therein are res adjudicata against the government in a subsequent criminal case. The analogies are all to the contrary. It is a bright idea, but no one seems to have thought of it before.

Attention is now directed to the claimed error in the admission of specific evidence. Apparently there is urged that no proof was admissible as to any overt act, because it is said none of those alleged could have been such as "clearly and unequivocally to effect the specific object of the conspiracy." The specific object, according to the indictment, was the teaching and the advocacy and organization for destruction and overthrow. Even belief may be removed from the circle of immunization, although this cannot be done "in the absence of overt act indicating such was his interpretation."

To take one example, the indictment charged, as mentioned above, one such act in the following language:

> "On or about January 21, 1949, Henry Steinberg, a defendant herein, did attend and participate in a meeting."

The proof showed that the meeting was called for several purposes, as outlined below. Steinberg made a number of [fol. 785] speeches there, and stated that "this was a Lenin Memorial meeting," at which he presided. An announcement of the meeting in the People's World asked persons to attend and "demonstrate for the Bill of Rights" as it would "serve primarily as a protest against the current trial in New York of twelve national leaders of the party." There was no question about the facts, which were uncontroverted, if the jury believed the testimony.

In the face of the objections that this was the act of a member and officer of the Communist Party and that it had no reasonable tendency to effect the proscribed objec-

tive, the evidence was clearly admissible to show the acts and intent of Steinberg personally or his participation. Without doubt, aside from this, the evidence was admissible on the allegation of the overt act. It was for the jury to determine, under proper instruction, whether the act was done with the intent and whether it tended to effect the object. Other allegations of overt acts made admissible proof thereof. No detailed discussion will be accorded them therefore. In each instance, the evidence admitted could have been justified upon the ground that it was in any event relevant as to the intent or participation of a particular defendant.

The defendants object strenuously to the receiving in evidence of various classes of reported words of the defendants and other persons. This question has been raised in each of the cases which have arisen under the terms of this Act, and it has been uniformly held that the usual rules of the criminal law in relation to conspiracy prevail. The chief complaint as to the utterances of the defendants themselves is that they are not sufficient to establish conspiracy or intent. But the expressions of a defendant in a criminal case are admissible against him either as admissions against interest or as voluntary acts which it is testified he has done. These utterances of a particular defendant were not protected from admission into evidence by the guaranties of freedom of speech. They could be related to a jury for the purpose of allowing the jury to determine whether the party were acting with an innocent or guilty intent as required. In criminal cases, the utterances of a defendant reported in court by other witnesses have always been received to determine intent. The declarations and acts of each defendant on his own account are particularly important since [fol. 786] his individual participation and intent must be shown independently of and without relation to declarations or acts of others.

Before the acts and declarations of third persons become binding upon an individual under the law of conspiracy, there must be shown to be (1) an illegal agreement to commit crime by two or more persons, (2) that the particular defendant was a knowing and willful participant, and (3) that the act or declaration by third party conspirator was in pursuance to and in order to bring about the criminal

objective. Proof of close association and concert of action over a period of years among those charged as co-conspirators might have established prima facie the unlawful agreement. If the other conditions were met, declarations and acts of third parties would be admissible against a particular defendant. In this connection, the proof of the association was not inadmissible by the particular defendant's membership or holding office in the Communist Party, for the indictment charges that the organization of a society or group was one of the objects, and even defendants do not claim organization of the party until 1945. But it is claimed that the third party declarant cannot be shown to be a co-conspirator by his own admission of membership in the party. This is correct. But proof of association in teh activities, coupled with such a declaration, might be sufficient. No instance was pointed out where such connection was not shown.

A great deal of evidence to prove "the nature and character and aims and objectives of the Communist Party" were objected to, and admission is assigned as error. It is, of course, agreed that the party was not indicted. But defendants were charged with conspiracy to organize a society or group to advocate and teach. Everything which was advocated and taught at meetings of the group or society would be relevant to determine what the purpose of the organization was. If it was found that the society or group was in the process of organization as the Communist Party, the teaching and advocacy under its auspices would be pertinent, whether or not defendants were present. It is true, an expression or utterance at such meeting would not be binding upon the Communist Party and, unless made by a co-conspirator, would not be binding upon a particular defendant, but it would be admissible. However, what was taught and advocated at schools and meetings of the Communist Party after the date of the formation of the con- [fol. 787] spiracy would be admissible in order to prove how much, if any, success the conspirators had in carrying out their illegal plan to organize groups, societies or assemblies and obtain recruits and to teach and advocate destruction. This became particularly pertinent in determining whether the conspiracy was still continuing during the three-year period prior to indictment and in determining

with what intent any defendant did one of the alleged overt acts within that period.

There was no statute such as the Smith Act before the passage of that enactment in its original form on June 28, 1940. It is contended that no evidence of the aims and objectives of the Communist Party then in existence (and which defendants claimed was later dissolved) by expressions at its meetings or the teaching in its schools was entitled to admission. But it must be remembered that some defendants were shown to have been closely associated with that organization and with each other, and they claim that its teachings were innocuous. The government was not selective, but introduced the literature and the expressions. These were pertinent if only to show there were other possible interpretations of the doctrine besides the version to which defendant Yates testified. Defendants had full opportunity to rebut these interpretations. It cannot be said these were inadmissible. The trial court might possibly have excluded such testimony on the ground of considerations of remoteness or administrative convenience. It was unquestionably relevant and therefore it was not error or abuse of discretion to admit the evidence.

After the introduction of the evidence by the government, which ran over nine thousand pages besides the voluminous exhibits, all defendants rested except Schneiderman, Yates, Stack and Carlson. The evidence of the defense consisted of two witnesses who testified shortly, the reading of a deposition and the testimony of defendant Yates. The latter consisted almost exclusively in an exposition of her "understanding" of the Communist Party teaching and advocacy on achieving the socialist revolution. Although the evidence intrinsically must be sufficient to convict beyond a reasonable doubt as to each defendant, it must be borne in mind that the jury weighed evidence which was in essentials uncontradicted.

[fol. 788] Many of the arguments, and indeed most of them, are reiterated in relation to the instructions given and refused. The trial court gave instructions on the subject of conspiracy to commit offenses against the United States, which are couched in precise and accurate language and which correctly reflect concepts approved by the Supreme Court and other federal courts over the period

of approximately eighty years during which this law has been upon the statute books. Appropriate cautions were given to protect fully the rights of defendants.

It was said that the conspiracy must be found to have existed as charged before the allegations of overt acts could be considered. The defendants contend that the overt acts charged in the indictment consisted of the exercise of either freedom of utterance, freedom of publication, or the free use of the right peaceably to assemble, and that therefore such acts, having been immunized by the Constitution, could not be used as indicia of crime. But it is well settled in ordinary conspiracy cases that the overt act proven need not have inherent criminal attributes or connotations, if it carries the illegal design into the filed of action. For, if criminal purposes can be shielded from prosecution by the use of speech, there will be no more convictions of those clever enough to use this medium.

It is true such an act in itself could be innocent. In order to consummate the conspiracy, as the court said, "It must, however, be an act which follows and tends to accomplish the plan or agreement, and must be knowingly done in furtherance of an object or purpose of the conspiracy charged in the indictment."

The trial court carefully limited the effect of testimony as to membership and officership in the Communist Party. Cautions against use of "similarity of conduct" or "association" or discussion of common "aims and interests" as absolute tests were given. The court instructed:

> "It has been said that 'a conspiracy is a partnership in criminal purposes'. The gist of the offense is a combination or agreement to violate the law,"

and that, if all elements of conspiracy were established,

> "then the success or failure of the conspiracy to accomplish the common purpose or design is immaterial."

[fol. 789] The requested instructions of the defendants, which the court refused, constitute a series of strange and distorted propositions as to the law of conspiracy. Defend-

ants contend that it was error to refuse a requested instruction that "the burden of proof cannot be met by showing that a particular interpretation of Marxist-Leninist theory is the most correct or the most probable interpretation with an inference therefrom that the Communist Party accept such interpretation" embodies all these errors. The conspirators were not indicted for teaching Marxist-Leninist philosophy or that of Stalin or Malenkov, but for conspiracy sparked by an intent to destroy.

The indictment did not charge that this literature on its face bore a sinister meaning, nor even that the individual defendants gave it a sinister meaning. Interpretations of the teachings of the Communist Party have no relevance because that entity was not on trial, nor were the doctrines which may have been taught or advocated by it. Defendants individually must have been found to have had the intent of immediate destruction. Each must have been found to have become a member of a combination so to teach and advocate and to organize persons who so teach and advocate with this object in view. Thus the interpretation of the literature, the written objectives and the constitution of the Communist Party of the United States, and the writings and speeches of the members and officials were irrelevant except as these tended to prove or disprove the individual guilt of the particular defendant of the crime charged in the indictment. Some instructions requested would give complete immunization to any speech, no matter if specifically uttered with the intent charged in this indictment. Any such formalistic test as this would, of course, give free rein to any subversive group because all they would have to do is to assemble to speak and to print words and distribute them. If then there could be argued that the meaning might be innocent on its face, the jury could not convict, according to appellants, even if it were one of the methods used to bring a conspiracy into the field of action.

Defendants apparently now contend the trial court should have told the jury that he found as a matter of law that the facts proved indicated "a clear and present danger." At least, they give lip-service to that contention. In our opin- [fol. 790] ion, such an instruction could be justified only as a comment on the evidence. The instructions of the trial

court clearly show that, if the jury convicted under the rules of law there laid down, they would have necessarily found a clear and present danger existed. If the trial judge had offered to instruct the jury as a matter of law on this subject, it seems that an exception [12] might have been taken on the ground of over-emphasis. The state of the evidence might justify it as it did in the Dennis case. Defendants can not rely upon the failure to make the comment by the trial court (a) because the exercise, whether justified or not, would be highly unfavorable to them, (b) because no litigant is entitled to a comment of fact by the judge, and (c) because the normal place for the trial judge to rule upon the question of law as to sufficiency of the evidence, including presence of clear and present danger would be upon a motion for acquittal.

Closely connected with this is the objection that the District Court made no ruling upon the power of each of the defendants "to bring about the evil." But the Supreme Court did not require any such proof as to each defendant in the Dennis case. It is obvious enough that, if it had, there could have been no conviction. To require the court to instruct that the co-conspirafors as a whole or that each defendant had the power to bring about the destruction of the government would be fantastic. If true, the revolution would have been consummated before trial. To require such a finding by a jury would be to ask them to take counsel of fear. In reliance upon the national aims and aspirations and the just consent of the governed, there are no such fears. On the other hand, if the trial court had thought these actions and utterances were merely vaporings of ineffective folk, upon motions for acquittal, a verdict of acquittal could have been directed.

Again, defendants make a point about the "language of incitement." They said the co-conspirators must have agreed not only to teach and advocate the violent overthrow as a duty and necessity with intent to bring it about as speedily as circumstances would permit, but that the trial

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[12] As the record shows, objection was made to Government's proposed instruction No. 23, which embodied a charge like that given in Dennis (R. 12346-7).

judge must have told the jury that, if it were found that [fol. 791] they had agreed not to use the language of incitement in teaching and advocacy thereof, no crime would have been committed.

The gist of the substantive crime of conspiracy is that an unlawful combination and agreement becomes a positive crime only when some of the proved conspirators enter the field of action pursuant to the criminal design. Therefore, if the conspiracy did not become a rule of action pursuant to the proscribed intent, there would have been no violation of the conspiracy statute. The use of such phrases in instructions might have been well enough where a violation of the Smith Act alone was charged in its original form. It would be folly to command imperatively that these specific phrases be each used in instructions after a trial on an indictment such as the present one.

In ruling upon the motions for acquittal, the trial court [13] decided as a matter of law that there was sufficient evidence to prove guilt of each defendant. In this ruling the trial court placed itself firmly as to each defendant upon the indictment which charged a conspiracy. The Supreme Court, in its main opinion in the Dennis case, said, "The formation by petitioners of such a highly organized conspiracy • • • subject to call when the leaders, these petitioners, felt that the time had come for action, coupled with the inflammable nature of world conditions • • • convince us that their convictions were justified." There was sufficient evidence to show that such a conspiracy existed, particularized as to the California area, and that it was implemented by continuous organization and use of groups and societies for teaching and advocating with the proscribed

[13] The attitude of the trial judge to the questions argued here, and many others, is set out in a series of opinions: United States v. Schneiderman, 102 F. Supp. 87 (dismissing the two original indictments); 104 F. Supp. 405 (in camera inspection of documents); 106 F. Supp. 737 (disclosure of notes of witness); 106 F. Supp. 892 (striking of evidence); 106 F. Supp. 906 (motions for judgment of acquittal, new trial and arrest of judgment), 106 F. Supp. 927-941 (instructions to the jury).

intent, the determination of the trial court must be upheld. The arguments urging upon us that the trial court held that "advocacy plus intent" was sufficient to found a conviction has no basis. The trial judge did not rule that clear and [fol. 792] present danger could be found to exist simply upon the basis of the possession of the proscribed intent. The trial judge "equated" "incitement" neither with "clear and present danger" nor "incitement" with the intent to bring about speedy overthrow. On the other hand, by applying the specific law of conspiracy, we are not convinced that the trial court found governmental powers by implication to be without inherent limits or exploited this law to engulf all powers which might possibly be exercised by an absolute sovereignty in the face of express prohibition. Indeed, the arguments presented by defendants and amicus curiae are paradoxical. Some of these declare with great insistence that there should not be one law for trial of Communists and another law for trial of persons charged with crime generally: a doctrine which requires no exposition in this Court. It is with utter inconsistency that they urge measures fantastic and bizarre which have never been applied in ordinary criminal cases. The most striking incongruities are found in these presentations. No further notice in detail will be taken thereof, but a short review of some of the matters considered by the trial court will prove the soundness of his rulings with regard to the evidence.

The most significant questions which are present in this record are those which relate to sufficiency of the evidence. The review by the Supreme Court of the Dennis case did not explicitly relate to the sufficiency of the evidence there. But the opinion of the Court of Appeals leaves no doubt that there was a sufficiency of evidence in that case. There is no attempt here to compare the content of the record in this case with that in the Dennis case or the Flynn case or any other case prosecuted under this statute.

There are only two questions in this regard for this Court. First, whether on each specific point essential for conviction there is sufficient evidence so that it can be said a jury could find the issue was established beyond a reasonable doubt and to a moral certainty. The jury, by the verdict, have already

expressed their satisfaction with the proof. Second, whether, on the record as a whole, it affirmatively appears that the trial was fair and impartial and the verdict can be sustained.

Many of defendants sought and obtained office as "organizers" in the party. The jury might well have inferred [fol. 793] from this participation a carrying into the field of action a phase of an illegal agreement to organize a group, society or assembly and thereby to furnish the society with organs and to arrange and constitute into interdependent parts the Communist Party in California and to furnish recruits therefor. It must always be remembered that the jury were regularly instructed that membership or holding office in the party are not denounced as such. But this would not prevent them from concluding that acceptance of an office designated as "organizer" with duties to assist in organization, evinced a participation in the unlawful agreement and, together with other circumstances as to a particular defendant, might prove it beyond a reasonable doubt.

The association of most of defendants among themselves and with other co-conspirators and with other persons whose advocacy of destruction is known was clearly proved. Their acts and conduct in close control of schools and classes where party members and putative recruits were taught the tenets of violent overthrow were clearly established. Indoctrination in techniques of action to induce revolution and of assaults upon citadels of bourgeois power was furthered and encouraged by these instruments. As to many of them, an individual finding that he was a well-trained professional revolutionist might well have been made. The concert of action of all could have been found by a jury beyond a reasonable doubt. The proscribed intent could also have been found as to any defendant. The jury were entitled to infer from the associations and the activities of the individual defendants participation in the unlawful agreement charged in violation of the specific statute. As to each defendant,[14] the jury might well have found a sufficiency of

[14] Each of the separate defendants has filed a brief contending the evidence was insufficient to sustain a conviction as to him. Th. e have been carefully considered in a review

evidence of association and concerted action to convince them of guilt to a moral certainty by evidence which was inconsistent with every other reasonable hypothesis.

Therefore, it is the function of this Court to review the evidence in this case to determine whether the rulings of the trial court on the motions for directed verdict were correct. [fol. 794] We hold there was evidence from which the jury might have concluded beyond a reasonable doubt:

(a) That two or more persons named as conspirators, after June 28, 1940, had entered into a combination and conspiracy as charged in the indictment;

(b) That each defendant herein, knowing of the unlawful design, became a party thereto and entered into the combination and acted in concert with the others charged as conspirators;

(c) That after the formation of this conspiracy at least one overt act charged in the indictment to effect the object of the conspiracy and in furtherance of the objects thereof was performed by a defendant within three years prior to the filing of the indictment;

(d) That each defendant, in joining this concert of action and in any act done in furtherance thereof, had the specific intent to overthrow and destroy the government of the United States by force and violence as speedily as circumstances would permit.

Technically then, we find the trial impeccable from the standpoint of fairness and from the standpoint of adherence to principles theretofore laid down. It remains to consider some extraneous incidents. Appellants moved to postpone the trial because of the publication of a serialized article in a local paper with the usual lurid announcements that revelations would be made as to "how the Communists intend to overthrow the U. S. Government and when" with a great deal more of similar import. The fact that the writer had been a witness in the trial of the New York defendants named here as co-conspirators was dwelt upon. The series

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of the record. The evidence was sufficient to submit to the jury as to each. Certainly, therefore, as to each the evidence was sufficient to sustain a verdict of guilty. It is unnecessary to set out tabulations of the facts here.

opened January 20 and ended February 7, 1952. The trial opened and the jury was drawn on February 1. The defendants had opportunity for examination of members of the jury as to prejudice, bias and formation and expression of opinion. This is sufficient safeguard. No trial could even be held during time of war, such as this was, if public discussion of vital national issues was the basis for postponement. The defendants had ample protection against an inclusion of a juror affected by such a newspaper discussion by the voir dire and the use of peremptory challenge. [fol. 795]. If the trial could have been postponed for sixty days for that reason, the defendants could never have been tried until Communism would have become a dead issue, no longer the subject of newspaper discussion. There was here no abuse of discretion.

There was a motion for mistrial based upon the affidavit of one of defendants, in which the following facts were set up: on June 25, 1952, J. Edgar Hoover, Director of the Federal Bureau of Investigation, at the request of Senator McCarran, Chairman of the Senate Internal Security Subcommittee, forwarded to the latter a monograph prepared by this organization. This document dealt with the advocacy of the Communist Party of violent overthrow of the government, and contained considerable documentation from the so-called Marxist-Leninist classics. The monograph was released to the press in Washington by Senator McCarran on July 29, 1952. That day and thereafter, just as counsel for the defense had completed his first argument, the release commenced to receive widespread coverage in Los Angeles by all leading newspapers, radio and television, and through such media excerpts from the monograph were broadcast to the public. When the matter was called to the attention of the trial court by motion for mistrial, various suggestions were made as to how the matter might be handled to discover whether the jurors had disobeyed the continuous instructions of the court to confine their attention to the evidence. The defendants were clearly fencing. The trial court decided to trust the jury. This reliance upon members of that body to act as judges is in accordance with our finest traditions.

The trial court said: "It is regrettable that the report was released for publication at an unfortunate time from

the standpoint of all concerned with this trial." Unquestionably, the matter was of immense public interest and was within the public domain. The media of publication had a right to publish. It has been pointed out that the government of a republic cannot operate without the pitiless light of publicity. Great service is performed daily by exposure of matters which, if suppressed, would operate to destroy our security. When the country was at war, as it was on July 1, 1952, publicity was especially necessary over matters of national concern in moral and ideological defense of current aims. Still, it should never be forgotten that if there [fol. 796] is a failure to accord to defendants a fair and impartial trial in a criminal case, the foundations are weakened. The powers of the trial court are conferred upon it for that express purpose. The media of publicity have an even greater responsibility than the courts to see that there is a fair trial of politically unpopular defendants. Somehow, there is a current belief that publicity is uncontrolled and that the courts are powerless to protect those charged with crime.

Ever since this Court has had this matter, there have been positive directions through publicity as to how it should be decided. But judges are products of a hardy climate. We do not palliate the offense, however. Such expressions do positive harm. It tends to make the public believe the courts accept such directions if the prophecy happens to be correct. It is much more true when a verdict of guilty is brought in after a great fanfare of publicity. With the trial court, we believe, to say the least, the incidents were extremely regrettable in the public interest.

However, a jury which had heard the evidence contained in this record over a period of six months, who deliberated for six days after the arguments, who had heard constantly reiterated warning not to read anything, not to listen to the radio and not to discuss anything which related to the case, probably tried to carry out their instructions and decide the case on the evidence. The trial judge believed this jury could be trusted. We do not think, simply because they arrived at a verdict of guilty, that his judgment was unsound.

Besides, there is a striking anomaly in the position of defendants. They claim the right to teach, advocate and as-

semble in the cause of sedition without interference so long as they take no action. They claim the right to advocate the duty and necessity of the overthrow so long as they do so sotto voce. They claim the right to hold publicity meetings in honor of the political saint of a sinister foreign power and demand the acquittal of their fellow conspirators then on trial. Yet they protest the right of a United States senator to give out a release on a subject vital to the security of this country in time of war. Apparently the Bill of Rights is double-edged.

[fol. 797] Even if the jurors or some of them heard or read some part of this public discussion—a fact not proved—this Court is of the opinion the verdict was founded on the evidence. The trial court properly refused to invade the secrecy of the petit jury room in order to discover material to cavil at the determination.

In conclusion, in the Dennis case the court was dealing with the substantive crime denounced by the single statute.

> "The first paragraph of the quoted instructions calls for the jury to find the facts essential to establish the substantive crime, violation of Section 2(a)(1) and 2(a)(3) of the Smith Act, involved in the conspiracy charge."

This statute has now been amended and the present indictment is much broader and bottomed essentially on a different enactment. There, in construing the specific act, the main opinion suggests:

> "The question in this case is whether the statute which the legislature has enacted may be constitutionally applied. In other words, the Court must examine judicially the application of the statute to the particular situation, to ascertain if the Constitution prohibits the conviction."

While the Supreme Court professedly did not review the evidence of the trial, there is indication that, if it had not been deemed sufficient, the conviction of the co-conspirators would have been set aside. The main opinion states:

> "Where there is doubt as to the intent of the defendants, the nature of their activities, or their power to

bring about the evil, this Court will review the convictions with the scrupulous care demanded by our Constitution. But we are not convinced that because there may be borderline cases at some time in the future, these convictions should be reversed because of the argument that these petitioners could not know that their activities were constitutionally proscribed by the statute."

It may be that prospects of larger policy or changes in the look of international affairs should be viewed to fix the acts proven here in perspective. But, as we understand it, as a lower federal court that is not our function. At the [fol. 798] time this case was tried, there was a background of war. The law which was passed in 1940 was passed to meet emergencies created by war although not especially to meet the threat involved in this case. That enactment has been denounced as the first peacetime sedition law since 1798, although anyone who believes the country was not at war in 1940 does not squarely face the facts of life.[15] If the founders were advised that statute was necessary to meet the threat of the excesses of the French Jacobins then tending toward world-wide imperialism with a fatalistic zeal and a crusading flair and therefore compatible with the new Constitution, the Act of 1940 was probably advisedly deemed necessary by the Congress to provide for the national defense and protect the national ideals and aspirations.

On the other hand, the future of this country is imbedded in the fundamental guaranties. The right to speak freely, even though tremendous majorities disagree, is fundamental. The power to assemble peaceably to present grievances is a foundation of liberty. The right to publish expressions and give them distribution dispite official disapproval must be retained. The jury found defendants guilty beyond a reasonable doubt of conspiracy to commit offenses against

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[15] See opinion of December 23, 1940, Stone vs. Christenson, 36 F. Supp. 739: "The petition of Stone rings changes upon 'peacetime' conscription. * * * but whether events prove we are at war, in a state of war, or clinging to an equivocal neutrality, a failure to register manpower of the country would be a failure to provide for 'the common defense'."

the United States of America "with the intent of causing the aforesaid overthrow and destruction of the government by force and violence as speedily as circumstances would permit." The actions, teaching, publication and freedom of assembly allowed without implication of criminality seem sufficiently to have vindicated the fundamental guaranties. The trial court elaborated upon the rights of defendants as follows:

> "Under our system of law, guilt of crime is a personal and individual matter. You may not convict any defendant merely by reason of the fact that you may find him or her to have been an officer or member of the Communist Party of the United States, no matter what you may find were the principles and doctrines advo- [fol. 799] cated and taught by that party during the period covered by the indictment. * * * The holding of a belief or opinion does not constitute advocacy or teaching. Hence the Smith Act does not prohibit persons who may believe that the violent overthrow and destruction of the Government of the United States is probable or inevitable from expressing that belief. Whether such belief be reasonable or unreasonable is immaterial. Prediction or prophecy is not advocacy. * * * Any advocacy or teaching which does not include the urging of force and violence as the means of overthrowing and destroying the Government of the United States is not within the issue of the indictment here and can constitute no basis for any finding against the defendants. * * * The kind of advocacy and teaching which is charged and upon which your verdict must be reached is not merely a desirability but a necessity that the Government of the United States be overthrown and destroyed by force and violence and not merely a propriety but a duty to overthrow and destroy the Government of the United States by force and violence. * * * The government referred to is the present Government of the United States, which does afford to the people democratic means for bringing about such changes as they desire; not some hypothetical future government which affords no such means. * * * The defendants, in common with all other persons living under

our Constitution, have a general right protected by the First Amendment to hold, express, teach and advocate opinions, even though their opinions are rejected by the overwhelming majority of the American people; and have the further right to organize or combine peaceably with other persons for the purpose of spreading and promoting their opinions more effectively. * * * Whether you agree with these opinions or whether they seem to you reasonable, unreasonable, absurd, distasteful or hateful has no bearing whatever on the right of other persons to maintain them and to seek to persuade others of their validity. * * * No inference that any of the defendants knowingly and wilfully conspired as charged in the indictment, or intended to cause or bring about the overthrow and destruction of the Government of the United States by force and violence as speedily as cir- [fol. 800] cumstances would permit, may be drawn from the advocacy or teaching of socialism or other economic or political or social doctrines, by reason of any unpopularity of such doctrines or by reason of any opinion you may hold with respect to whether such doctrines, or the opinions or beliefs of any of the defendants, are unreasonable, distasteful, absurd or hateful. * * * The defendants, in common with other persons living under our Constitution, have the right protected by the First Amendment to criticize our system of Government and the Government itself, even though the speaking or writing of such criticism may undermine confidence in the Government or cause or increase discontent. They have the right also to criticize the foreign policy of the United States and the role being played by this country in international affairs; and to praise the foreign policy of other governments and the role being played by those governments in international affairs. * * * The right of the defendants to enjoy such freedom of expression is unaffected by whether or not the opinions spoken or published may seem to you to be crudely intemperate, or to contain falsehoods, or to be designed to embarrass the Government. No inference of conspiracy to advocate and teach the necessity and duty of overthrow and destruction of the Government of the United States by force and violence, or of intent to

cause or bring about the overthrow and destruction of the Government of the United States by force and violence as speedily as circumstances would permit, may be drawn from such expressions alone. * * * Therefore, activities such as membership or officership in the Communist Party, or organization of units of the Communist Party, or recruitment of members, or the circulation of books, articles, magazines and newspapers, or the writing of articles and directives, or the conducting of schools and classes, or going 'underground,' or the use of fictitious names, are not to be considered unless you are satisfied beyond a reasonable doubt from all the evidence in the case that any such activities of the defendants or any of them, as you may find, were carried on as means or methods in furtherance of an object or purpose of the conspiracy alleged in the indictment. * * * No statement or writing of any kind purporting to [fol. 801] declare the principles or theories of the Communist Party, or on any other topic, may be imputed to the Communist Party merely because made by some member, leader or officer of the party, or a teacher of a party school or class, in the course of party activities. * * * The defendants are not being tried to determine what kind of people they are, or what sort of things they would be likely to do if allowed to remain at liberty. Rather it is your duty to determine whether the evidence establishes beyond a reasonable doubt that they did do in the past the things charged in the indictment. * * * As previously stated, the intent required to convict a defendant is not merely the intentional conspiracy to teach and advocate the necessity and duty of overthrowing and destroying the Government of the United States by force and violence. It must also appear beyond a reasonable doubt from the evidence in the case that such defendant had the further specific intent to cause or bring about the overthrow and destruction of the Government of the United States by force and violence as speedily as circumstances would permit."

Defendants were convicted of something very different from the use of speech, assembly or publication.

Affirmed.

[fol. 802] IN UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

No. 13480

OLETA O'CONNOR YATES, HENRY STEINBERG, LORETTA STARVUS STACK, Frank Efroim Spector, William Schneiderman, Al Richmond, Albert Jason Lima, Carl Rude Lambert, Rose Chernin Kusnitz, Ernest Otto Fox, Ben Dobbs, Dorothy Healy Connelly, Philip Marshall Connelly and Frank Carlson, Appellants,

vs.

UNITED STATES OF AMERICA, Appellee

JUDGMENT—Entered March 17, 1955

Appeals from the United States District Court for the Southern District of California, Central Division.

These causes came on to be heard on the Transcript of the Record from the United States District Court for the Southern District of California, Central Division, and were duly submitted.

On consideration whereof, It is now here ordered and adjudged by this Court, that the Judgments of the said District Court in this cause be, and hereby is affirmed.

[File endorsement omitted.]

[fol. 803] IN UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Before: Stephens, Fee and Chambers, Circuit Judges.

MINUTE ENTRY OF ORDER DENYING PETITION FOR REHEARING —June 15, 1955

On consideration thereof, and by direction of the Court, it is ordered that the petition of Appellants, filed May 16, 1955, and within time allowed therefor by rule of Court, and valid extension thereof, for a rehearing of the above causes be, and hereby is denied.

[fol. 804] Clerk's Certificate to foregoing transcript omitted in printing.

[fols. 805-806] SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1955

No. —

OLETA O'CONNOR YATES, ET AL., Petitioners,

vs.

UNITED STATES OF AMERICA

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI—June 27

Upon consideration of the application of counsel for petitioners,

It is ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including August 13th, 1955.

(Signature illegible), Associate Justice of the Supreme Court of the United States.

Dated this twenty-seventh day of June, 1955.

[fols. 807-808] SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1955

No. 308

OLETA O'CONNOR YATES, HENRY STEINBERG, LORETTA STARVUS STACK, ET AL., Petitioners,

vs.

UNITED STATES OF AMERICA

ORDER ALLOWING CERTIORARI—Filed October 17, 1955

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fols. 809-810] SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1955

No. 309

WILLIAM SCHNEIDERMAN, Petitioner,

vs.

UNITED STATES OF AMERICA

ORDER ALLOWING CERTIORARI—Filed October 17, 1955

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

[fols. 811-812] SUPREME COURT OF THE UNITED STATES,
OCTOBER TERM, 1955

No. 310

AL RICHMOND and PHILIP MARSHALL CONNELLY, Petitioners,

vs.

UNITED STATES OF AMERICA

ORDER ALLOWING CERTIORARI—Filed October 17, 1955

The petition herein for a writ of certiorari to the United States Court of Appeals for the Ninth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.